S. HRG. 99-442

FEDERAL EXPENDITURES AND POLICIES RELATED TO STORAGE AND DISPOSAL OF CONFISCATED VESSELS ON THE MIAMI RIVER

HEARING

BEFORE THE

COMMITTEE ON THE BUDGET
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

MIAMI, FL
OCTOBER 14, 1985

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FEDERAL EXPENDITURES AND POLICIES RELATED TO STORAGE AND DISPOSAL OF CONFISCATED VESSELS ON THE MIAMI RIVER

MONDAY, OCTOBER 14, 1985

U.S. SENATE,
COMMITTEE ON THE BUDGET,
Miami, FL.

The committee met, pursuant to notice, at 10:30 a.m., in Jose Marti Park, 351 Southwest 4th Street, Miami, FL, Hon. Lawton Chiles presiding.

Present: Senator Chiles.

Staff present: Dennis Beal, Michael Hall, and Mark Bailey.

OPENING STATEMENT OF SENATOR CHILES

Senator CHILES. Good morning, ladies and gentlemen.

We have come here this morning from a trip on a river through one of the great cities of the world, but unlike some of the other great cities—Paris, London, New York, St. Louis, and San Antonio—Miami at this time does not have a great river, and, indeed, in some ways the Miami River is a disservice and a hazard to the people who live here and to the millions of people who have settled in the past along its shores.

MIAMI RIVER A FLOATING JUNKYARD

What we have seen is that Miami does certainly have a working river, and it is vital to the area of commerce, but as a working river—thriving with tankers and barges loaded with diverse cargoes from many diverse cultures—it has become something of a floating junkyard.

Unfortunately, the same Federal Government that has assisted and encouraged other American cities to develop and protect their waterways has been one of the main causes—if not the main cause—of turning our river into the eyesore it has become.

The same Federal Government which has worked so hard and spent so many tax dollars protecting our citizens and shores from illegal aliens and drug smugglers has taken the byproducts of those noble efforts and dumped them into the Miami River. Today we see that it is littered with some rusting hulks—many of them with infamous histories—and we want to discover this morning why the Federal Government has allowed the byproducts of drug enforcement to pollute our waterway.

It is a sad irony that—while other rivers in other cities have been cleansed of the industrial wastes which threaten their water supplies—the Miami River has become a dumping ground for the vessels which once carried chemical and criminal threats to our own population.

Some of the hulks that we saw this morning are the same boats that I saw on an earlier trip up the river in August. Many of them have been there for a number of years. Most of them—or many of them—are in the custody of the U.S. Customs Service, which, according to the reports of the Federal investigators I sent to Miami 2 weeks ago, has either been neglectful or indifferent to its mission.

CUSTOMS SERVICE RESPONSIBLE FOR DISPOSING OF BOATS

One of the responsibilities of the Customs Service is to store seized vessels until they can be legally disposed of. Disposal takes place as Customs first offers the boats, as surplus, to other Federal agencies, and then to State and local governments. If the boats are turned down by the other agencies, Customs may then sell them on the open market and recoup the costs incurred during the storage and maintenance of the vessels.

Some of the boats that we have seen this morning are vessels for which the American taxpayer has been paying storage fees for many, many years, and these storage fees—for the Miami River alone—are in excess of three-quarters of $1 million per year.

Some of these boats will not sell for as much money as the American taxpayer has shelled out to store them. We want to know why. want to know why.

We also want to know why the Customs Service has now identified 145 boats in their inventory, after telling me in July that they only had 14.

We also want to explore why the Customs Service is not taking better advantage of the law that we enacted in Congress last year which speeds the forfeiture proceedings so that boats may be sold more quickly, and we want to know why the Customs Service does not use the quick-sale option provided under the new law.

We have invited other Federal agencies to testify this morning on their efforts to work with the Customs Service and with local officials to revitalize the Miami River.

Officials from State and local governments will also tell us of their efforts to work with the Customs Service and with other government representatives to rid the river of these floating eyesores and navigational hazards.

I expect that we will hear that the Miami River is one of the most regulated, but least supervised, rivers ever.

Never have so many agencies regulated so little a body of water with so few results.

It seems to me that we have more than enough legal authority and resources to get the job done, but that we lack the vigilance and the will to do what is necessary.

The hearing today is not called to review the promises or to hear more of them.

We want some answers this morning, and we would like to see some action this afternoon.

Our first witness will be Mr. Robert L. Parks, who is the chairman of the Miami River Management Committee. Bob, we are delighted to have you be on our witness panel this morning.

STATEMENT OF ROBERT L. PARKS, CHAIRMAN, MIAMI RIVER MANAGEMENT COMMITTEE, ACCOMPANIED BY PETER ANDERSON, SUBCOMMITTEE ON ABANDONED AND DERELICT VESSELS, AND SANDRA S. HOWARD, ADMINISTRATIVE ASSISTANT

Mr. PARKS. Senator Chiles, thank you very much.

Senator CHILES. Your statement in full will be included in the record, and we will try to brief them today.

We are starting a little bit behind schedule because of our tour, so we would appreciate----

Mr. PARKS. I am going to be very brief, sir, and since I have given a written statement, I am just going to touch on a couple of the high points that I would particularly like to talk to you about.

First, I would like to thank you for allowing me to appear here.

The Miami River Management Committee, which was created by Governor Graham in December 1983, has been comprised of a number of citizens and people from governmental agencies who have been very interested in getting the river back to what it should be, as part of one of the great cities of the world.

RIVER OVERGOVERNED

Basically, the biggest problem with the Miami River at this point is that it is the most overgoverned body of water in the United States, without any question.

Vessels, as we saw this morning, threaten to turn over into the river, but nothing can be done until they do.

Vessels are moored improperly, and there are no mooring codes.

The city of Miami does not have a mooring code.

Vessels up the river are tied up directly to city property, and there is no way to remove them quickly and efficiently.

Basically, I think that the biggest single factor in your appearing here today is to direct community activity or community attention to the needs of the river, and that is one of the things that this committee has worked very hard to do.

We are delighted to have you here, and we are delighted to see what we contend to be a real awakening of the business leadership and the political leadership in this city to a body of water which now runs right through the city of Miami, and which is very much an integral part of it, and which must be in terms of the rehabilitation and redevelopment of this area.

I am now open to answer any questions.

Senator CHILES. Thank you, Mr. Parks.

[The prepared statement of Mr. Parks follows:]

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STATEMENT BY ROBERT L. PARKS FOR BUDGET HEARING BEFORE U.S. SENATOR LAWTON CHILES, MONDAY, OCTOBER 14, 1985

As Chairman of the Miami River Management Committee I greatly appreciate this opportunity to testify before you concerning the needs of the Miami River. The Committee appreciates the interest which you have shown our concerns in the past and we feel that this budget hearing is an excellent way to focus attention on the myriad of problems still existing in the river. Governor Bob Graham recognized those problems and, for that reason, created the Miami River Management Committee. For the past two years we have been trying to sort out the many agencies having jurisdiction over the river. We have learned that the Miami River may be the most overgoverned body of water in America. Numerous federal, state and local governmental agencies all have jurisdiction over the same or similar areas. Such overlapping jurisdictions make planning and zoning, derelict vessel removal and environmental regulation difficult and confusing. Our subcommittee on the removal of abandoned and derelict vessels has just completed its annual report which will be presented to Governor Graham in December. As that report indicates, we still have over 110 Customs seized vessels in the river (some dating back to 1977), 30 deteriorating, submerged and partially submerged vessels in the river and large cargo freighters tied to trees and light poles. We are continuing to urge the City Commission to act on the Vessel Mooring Ordinance which was passed

by the City's own Waterfront Board in April, 1985. That ordinance would allow for the removal of many of those 30 derelict vessels in the river. At present in Miami, a city with a very lengthy shoreline, we have no mooring code. There are over 40,000 registered boaters in Dade County but the City of Miami has no say in how those boats should be moored. In addition, we need the cooperation of all the appropriate agencies in securing 24-hour police protection on the river. In general the MRMC has found that the laws are already in place, the regulations and ordinances already passed and the personnel on staff, but we have not seen evidence of the enforcement which is so desperately needed. Thank you for taking the time once again to call attention to the Miami River and its problems. If the Miami River Management Committee can assist you in any way, please let us know.

Senator CHILES. I want to congratulate the River Management Committee for its efforts in continuing to try to bring the river to the attention of everybody. Also, I would like to have included in the record at this point descriptive material prepared by the River Management Committee regarding the Miami River.

THE MIAMI RIVER—A PROFILE

The Miami River is a waterway short in length, long in debate and rich in impact on the city that was built because the river was there.

As South Florida's oldest natural landmark, the river has attracted residents since around 500 B.C. From this early use to the present, the river has been a route for travel; from the primal link between the Everglades and Biscayne Bay, the river has evolved to a trade route with the Caribbean and South America. Along the way it has become a path to the past of the metropolis on its banks.

Any overview of the Miami River should address the history, the development, the usage and the conditions of this urban waterfront. That the river is many things to many people underscores its importance. An understanding of its needs and limitations is necessary for preserving its utility to the community it serves.

THE HISTORY

The primordial river was a tidal channel through a limestone ridge that allowed Everglades freshwater to reach Biscayne Bay. In historic times, a succession of Indians, Spaniards, Englishmen, Bahamians and North Americans have occupied the river.

In the 16th century, a Spanish mission was established on the north bank of the river to proselytize a population of about 5,000 Indians. Abandoned after a few years, this first European settlement was followed by a second effort in the 18th century at a time when the Indian population had declined for reasons of disease, warfare and emigration to Cuba. By the late 1700's Bahamians had arrived to fish, hunt, and salvage wrecks from the emerging coastal shipping traffic.

White settlers had built along the river by the early 19th century. A plantation was built by slaves at the mouth of the river on the north bank using limestone rock quarried at the site. At the same time, a coontie starch mill was constructed some four and a half miles inland near the falls that marked the extent of the navigable channel. Appropriately enough, the coonite starch business was the first major industry in South Florida, thus establishing the river's long impact on area business.

William Brickell built a store and house on the south bank of the river mouth in 1871. The business flourished and was a major focus of Seminole trade until the 1900's. In this period Julia Tuttle arrived from Ohio and purchased the plantation

on the north bank of the river mouth. At her urging, Henry Flagler extended his railroad to the river to trigger the birth of the City of Miami and the beginning of the river's modern era.

THE DEVELOPMENT

In 1897, Flagler built the opulent Royal Palm Hotel at the mouth of the river. In the early 1900's tourists and residents alike took cruises up the river to the Musa Isle and Coppinger's Indian Village attractions. The "jungle cruise" ran the 4½ miles from the mouth to the 6 foot natural ridge and falls at what is now the Paradise Park site at N.W. South River Drive and approximately 29th Avenue.

As the 20th century got under way, the river changed from a simple transportation route to a developing trade center with business opportunities created by the Florida East Coast Railroad docks and warehouses. Winter vegetables brought in by local boating were loaded on trains for shipment north. City residents bought seafood, fruits, vegetables and dry goods along the river banks.

Between 1909 and 1933, the very structure of the river was dramatically altered. In 1909, the ancient falls ceased to exist by the building of the Miami Canal portion of the Everglades drainage project. At the present, this dredged canal reaches eighty miles from Lake Okeechobee to Biscayne Bay. As in the past, the navigable portion is limited, with the modern day barrier a salinity dam some 5½ miles upstream at 36th Street.

Some thirteen bridges now span the river accommodates a few blocks of pri-Street dam with a fourteenth under construction at South Miami Avenue. Along the 5½ mile length, the river is now fully developed as the core of the city between the bay and Miami International Airport.

THE USAGE

The Miami River serves a variety of commercial and recreational interests along five distinct sections, each characterized by the structures and ambiance relevant to those interests.

From the mouth to the overpass of Interstate 95, the river hosts the jumble of features of a bustling and redeveloping downtown. New hotels, office buildings, a convention center, Metrorail, riverfront parks and vacant parcels ripe for construction are interspersed with small boatyards, marinas and other small businesses.

The subsequent stretch to the 5th Street bridge is marked by narrow lots with commercial fisheries, shipping terminals, marine businesses institutions and the Jose Marti and Lummus Parks.

From 5th Street to 7th Avenue, the river accommodates a few blocks of private homes, some apartment buildings, more boatyards and marinas, lodges, warehouses and government buildings.

Above 17th Avenue to 27th Avenue is perhaps the most "attractive" portion of the river featuring homes, marinas, boatyards, a hospital and the relatively lush grounds of Sewell Park.

As an irony of history, the part of the river (actually canal) which hosts the heavy industrial and shipping businesses is the farthest inland from 27th Avenue to the salinity dam. Ocean freighters serving the Caribbean and South America are towed upstream under twelve bridges to reach this ship line 1½ miles of marine terminals, stevedoring companies, metals dealers, boatyards, tow boat and service businesses.

THE CONDITION

The many and disparate uses of the Miami River have spawned a number of problems which demand resolution. Silting has reduced the navigability, pollution has created hazards to health, urban crime has threatened safety and property, and competing private use and conflicting government regulations have posed problems and stymied efforts at resolutions.

In response, the Miami River Management Committee (MRMC) was formed by Governor Bob Graham in December 1983 to take a year long look at the river to assess its conditions, examine the prospects and propose recommendations. The report of the first year's activities of the MRMC was presented to the Governor on December 15, 1984, and addressed the major issues.

In his cover letter with the MRMC Recommendations, Chairman Bob Parks cited four points to be of highest priority. The first was the surprising lack of police protection afforded the river community. A 24 hour river patrol was requested in place of the present sporadic daytime patrol. As yet, there has been no response at the

city or county level, although the state Department of Natural Resources has requested funding for 100 additional patrol members, some of whom would be assigned to the river.

The second cited problem was the pollution thought to result from storm water outfalls. The suggestion was made that the city, county and state fund studies to identify specific sources and that efforts be made to design for elimination of the worst offenders.

Thirdly, water dependent businesses are thought to be threatened by government policies (including zoning) and economic conditions, e.g. condos replacing marinas, which call for legislation that might include tax considerations. The suggestion was made that "blue belt" legislation favoring water dependent businesses might be a logical analogy to the "green belt" legislation which encourages low density residential development.

Finally, Parks suggested that the committee be extended for one year to further cope with the multiple government agencies that oversee various aspects of the river. On December 21, 1984, Governor Graham signed an executive order which authorized this extension. The Governor's staff is presently compiling an implementation schedule for realization of the MRMC suggestions. In addition, the Department of Environmental Regulation has requested $250,000 in support of MRMC recommendations.

Several issues were identified in addition to those cited by Chairman Parks. Two examples of interest to shipping companies are the matters of derelict vessel removal and dredging to restore the shipping channel.

A major recommendation regarding derelict vessels is the encouragement of passage of legislation (H.R. 4901) which would streamline forfeiture procedures for seizure and removal of derelict vessels. In connection with this suggestion, the state Department of Natural Resources has asked for $150,000 to fund artificial reef projects utilizing such derelict vessels.

The problem of dredging is complicated by both the facts of the problem and the required permitting and funding for such dredging to take place. As it happens, the sediments to be removed are saturated with hydrocarbons and contain heavy concentrations of toxic metals such as arsenic, cadmium, lead, mercury and silver. (The silver concentration is especially notable in the Seybold Canal and may result from processing of X-ray films by the hospitals in the area.) With these ingredients, the sludge may not be permitted to be dumped at sea since it would likely be classified hazardous waste requiring inland disposal at enormous cost. At present, there is something of an impasse on the subject with any action likely only after much further study.

RIVER COULD BE ASSET TO COMMUNITY

When you really think of what an asset the river could be and should be to the community, it seems tragic that it is not.

We know that it is certainly a busy commercial river, and I understand—I found out this morning—that it is third in the volume of traffic of rivers in the country. That is certainly important, and no one wants to curtail that or to stop that, but still the river is not a plus, as far as what it could be for this community; it is a minus, and that ought to be changed.

The river ought to be something that everybody here can be proud of.

The river ought to teem with activity and be a cultural advantage, but it is certainly not.

Mr. PARKS. The river is now and has been—hopefully, that will change, and your appearance here today is going to, I think, take a large step toward doing that but it has been Miami's stepchild, and we spend millions of dollars developing and planning other areas, but the river has just not gotten that much attention, and we hope to change that.

Thank you, sir, and if the Miami River Management Committee can assist you in any way, please let us know.

Senator CHILES. Our next witness will be from the General Accounting Office, and we will have Mr. James Burow, who will appear along with Mr. Thomas Gibson from the General Accounting Office.

STATEMENT OF JAMES BUROW, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY THOMAS GIBSON

Mr. BUROW. Senator CHILES, I would like to thank you for inviting us here. I have no prepared statement; however, I am prepared to answer any questions that you may have.

I would like to say first of all that 3 weeks ago, you asked us as representatives of GAO working for Congress to come down here and take a look at the situation.

We came to Miami, and we found that several boats that were in the Miami River, under the control of the Customs Service, obviously could have been disposed of earlier.

Senator CHILES. Well, we want to thank you for your prompt attention to our request that you come down here.

You do operate as the sort of arm of the Congress that helps us to do some impartial investigating and looking into items, as well as recordkeeping.

137 CUSTOMS BOATS ON RIVER

I know that there has been some difficulty in obtaining the correct number of Customs' boats on the river.

Could you describe for me the recordkeeping system maintained by the Customs Service here in Miami to keep up with both the number and disposition of the boats?

Mr. BUROW. Senator CHILES, when we first got here, we asked for a list of those boats that Customs had on the Miami River so that we could go out and take a look at them.

Initially, there was no list, but customs made a list from the files that they had.

After we got their list—it was a list of 137 boats that they provided us with—we took a ride on the river and tried to identify some of the boats that were on the list.

As we could see, during our ride on the river today, there are some that belong to Customs and some that do not. It is a bit confusing as to which ones belong to Customs and which ones do not.

When we got back to the Customs office, we asked for a more detailed list, and we asked for an explanation for some of those boats we saw that were in disrepair. Customs pulled those files.

The one that interested me the most was the *Monica*. The *Monica* has been around since 1982. We asked, "Why is it still here?"

The information that we were provided with was that it had evidently fallen through the cracks, and that it could have been disposed of several years ago.

Senator CHILES. You said that the *Monica* slipped through the cracks, and that it could have been disposed of sooner, and that it had been seized in 1982.

Mr. BUROW. That is what the Customs Service told us, sir; that this particular boat was seized on October 4, 1981, and it was for-

feited on June 7, 1983, just as you show on that chart. Before the Customs Service could get it out of its inventory, so to speak, it had to go to the General Accounting Office [GSA] and ask for disposition.

GSA tries to find out if there was any other Federal agency that could use that boat.

There were some indications in the file that the Customs Service had gone to GSA to get disposition, but there was no indication that they received an answer from GSA.

There was no system that they had—the Customs Service here in Miami—to follow up and keep up with which boats it could have gotten rid of.

What I am saying is that the bottom line is that they could have gotten rid of that boat earlier.

FORFEITURE PROCESS NOT GIVEN HIGHEST PRIORITY

Senator CHILES. We paid storage costs of over $9,000 just while it was sitting there, with no way of following up to determine whether we were going to get rid of the boat or not, as it had been stored since 1982.

Based upon your review of the file and your interviews with the Customs Service officials on the length of time that it takes between the various steps of the process, do you feel that Customs has given the forfeiture process the kind of priority that it should have been given?

Mr. BUROW. Sir, I think that the priority that they gave it before we got down here was probably not the highest priority that they should have given it.

I can assure you that in the last 2 weeks they have taken some steps to clear up the situation, and I think they will be explaining those to you.

Senator CHILES. As you know, Customs has signed a $44 million 4-year contract with Northrop to store and maintain seized properties.

Will that contract help to streamline the forfeiture process and help remove the rusting hulks from the river?

Mr. BUROW. Sir, I am not that familiar with the particulars of that contract.

I am aware that there is a contract, and I would say that in order for that contract to work, Customs is going to have to have its records straight in order for the contractor to take over the system of maintaining and disposing of boats.

Senator CHILES. Again, we thank you very much for your attendance and for your quick response in helping us to look at this situation.

Thank you both very much.

Mr. BUROW. Thank you, sir.

Senator CHILES. We will now hear from the U.S. Customs Service, Mr. Ed Kwas, the Regional Administrator.

Mr. Kwas, I will let you introduce those accompanying you.

STATEMENT OF EDWARD KWAS, REGIONAL ADMINISTRATOR, U.S. CUSTOMS SERVICE, ACCOMPANIED BY HARRY CARNES, DISTRICT DIRECTOR IN MIAMI; CHARLES WINWOOD, ASSISTANT REGIONAL COMMISSIONER FOR OPERATIONS; RICHARD FRIEDLAND, REGIONAL COUNSEL; PATRICIA McCAULEY, ACTING DIRECTOR, SEIZED PROPERTY DIVISION; AND DAN BURROWS, DIRECTOR, OFFICE OF LOGISTICS MANAGEMENT

Mr. KWAS. Good morning, Senator Chiles. My name is Ed Kwas, and I am the Regional Commissioner of Customs in the southeast region. I have held this post since June 17, 1985.

With me are Harry Carnes, who is the District Director in Miami; Charles Winwood, who is the Assistant Regional Commissioner for Operations; Richard Friedland, who is our regional counsel, and Patricia McCauley, from our Service headquarters.

We are pleased to participate in this hearing regarding the Miami River.

The U.S. Customs Service uses various marinas along the Miami River to store seized vessels while the forfeiture process takes place.

Senator CHILES. Again, Mr. Kwas, I want to thank you for being here, and to tell you that we will take your statement in full and put it in the record. If you can brief it for us in some ways, that will be helpful to us.

[The prepared statement of Mr. Kwas follows:]

PREPARED STATEMENT OF EDWARD KWAS, REGIONAL COMMISSIONER, U S CUSTOMS SERVICE, SOUTHEAST REGION

My name is Edward Kwas and I am the Regional Commissioner of the U.S. Customs Service in the Southeast Region. I have held this post since June 17, 1985. With me are Harry Carnes, District Director, Miami; Charles W. Winwood, Assistant Regional Commissioner (Operations); Richard Friedland, Regional Counsel; and Patricia McCauley of Service Headquarters. We are pleased to participate in this hearing regarding the Miami River.

The U.S. Customs Service uses various marinas along the Miami River to store seized vessels while the forfeiture process takes place. As of October 9, 1985, 145 seized vessels were stored on the Miami River. This total includes vessels actually stored on the river, vessels located in marina slips along the river and vessels in dry dock on the banks of the river. As a matter of fact, 71 of the 145 vessels are in dry dock status.

THE CUSTOMS SERVICE USES I2 MARINAS ALONG THE MIAMI RIVER TO STORE AND MAINTAIN THESE VESSELS. THESE MARINAS ARE AS FOLLOWS: FLORIDA MARINE, MOBY MARINE, ROBINSON, MERRILL-STEVENS, JONES BOAT YARD, AVIATION MARINE, HARDIE YACHT, BIMINI BOAT YARD, HEMPSTEAD MARINE, FLORIDA YACHT, SCHURGERS AND 8TH AVENUE BOAT SLIP. THE PINS ON THIS MAP SHOW THE NUMBER OF CUSTOMS SEIZED VESSELS AT EACH MARINA AS WELL AS ATTEMPTING TO SHOW THE GENERAL DISTRIBUTION OF ALL OTHER VESSELS ALONG THE RIVER.

ON OCTOBER 9, I985, 32 BOATS OR 22% OF THE TOTAL WERE OFFERED AT A REGULARLY SCHEDULED GSA AUCTION. OF THESE, 30 WERE SOLD. SIXTY-FOUR ADDITIONAL VESSELS HAVE BEEN FORFEITED AND ARE IN VARYING STAGES OF FINAL DISPOSITION. TWENTY-FIVE OTHER VESSELS FALL INTO ONE OF THREE CATEGORIES - (I) THOSE PENDING JUDICIAL DECISION, (2)

FOREIGN FLAG VESSELS AWAITING FINAL RESOLUTION AND (3) MARIEL FLOTILLA VESSELS AWAITING FINAL DISPOSITION. CUSTOMS DOES NOT HAVE AUTHORITY TO TAKE ANY DISPOSITIVE ACTION ON VESSELS IN THESE CATEGORIES. THE BALANCE RESTS WITHIN VARIOUS STAGES OF THE ADMINISTRATIVE PROCESS BEFORE FORFEITURE.

SENATOR CHILES. I KNOW THAT YOU ARE AWARE THAT NARCOTICS INTERDICTION IS A MAJOR PRIORITY OF THE U.S. CUSTOMS SERVICE. I AM PROUD OF THE ACHIEVEMENTS OF THE SOUTHEAST REGION IN THIS AREA. HOWEVER, OUR SUCCESS HAS BROUGHT US MAJOR ADMINISTRATIVE PROBLEMS IN THE EXPEDITIOUS FORFEITURE AND DISPOSITION OF THESE SEIZED VESSELS. WHILE WE HAVE BEEN REMISS IN THE TIMELY DISPOSITION OF SOME OF THE VESSELS FORFEITED TO THE GOVERNMENT, OUR PROCEDURAL DEFECTS HAVE BEEN COMPLETELY

IDENTIFIED. COMMISSIONER VON RAAB HAS INSTRUCTED ME TO CORRECT ALL CURRENT DEFICIENCIES IMMEDIATELY AND TO INSURE THAT OUR FUTURE SYSTEM OPERATES EFFICIENTLY. ALL CONCERNED PARTIES HAVE MY ASSURANCE THAT THIS WILL HAPPEN.

THE SYSTEM TO EFFECT FORFEITURE AND PROPER DISPOSITION OF SEIZED VESSELS HAS MANY STEPS AND CAN, AT TIMES, BE QUITE LENGTHY. RECOGNIZING THIS, THE U.S. CUSTOMS SERVICE HAS TAKEN AN INITIATIVE TO STREAMLINE THE PRESENT SYSTEM. RECENTLY, STORAGE, MAINTENANCE AND FINAL DISPOSITION OF ALL SEIZED PROPERTY HAS BEEN CONTRACTED OUT TO NORTHROP INCORPORATED AFTER COMPETITIVE BIDDING. NORTHROP AND U.S. CUSTOMS WILL DEVELOP, IMPLEMENT AND UTILIZE A NATIONWIDE AUTOMATED SYSTEM TO CONTROL SEIZED PROPERTY. THIS INITIATIVE SHOULD GAIN MANPOWER BENEFITS FOR CUSTOMS AS WELL AS INSURING TIMELY AND EFFICIENT DISPOSITION OF SEIZED PROPERTY.

ON ANOTHER POSITIVE NOTE, THE COMPREHENSIVE CRIME CONTROL ACT OF 1984 AND THE TRADE AND TARIFF ACT OF 1984 MADE VARIOUS CHANGES TO THE TARIFF ACT OF 1930 WITH REGARD TO THE FORFEITURE AND DISPOSITION OF PROPERTY SEIZED BY CUSTOMS. PRIOR TO THESE CHANGES, THE MAJORITY OF SEIZED VESSEL CASES HAD TO BE PROCESSED THROUGH THE JUDICIAL SYSTEM. UNDER THE NEW SUMMARY FORFEITURE PROCEEDINGS WE HAVE EXPERIENCED A SIGNIFICANT REDUCTION IN THE AMOUNT OF TIME TO GAIN FORFEITURE OF A VESSEL.

PRIOR TO OCTOBER 1984, WHEN THE LEGISLATIVE CHANGES WERE EFFECTED, THE AVERAGE TIME FOR A VESSEL TO BE FORFEITED WAS 14 MONTHS. DURING FY 1985 THE AVERAGE PROCESSING TIME TO EFFECT FORFEITURE HAS BEEN FOUR MONTHS. DURING FY 1985, WE SEIZED 199 VESSELS IN THE MIAMI DISTRICT. OF THIS TOTAL, 122 VESSELS OR 62% HAVE BEEN SUMMARILY FORFEITED.

IN CONCLUSION, THE CUSTOMS SERVICE WILL TAKE TIMELY AND APPROPRIATE ACTION TO INSURE PROPER FORFEITURE AND DISPOSITION OF SEIZED VESSELS AND OTHER SEIZED PROPERTY. I THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS HEARING AND WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MAY HAVE ON THE MATTER.

Mr. KWAS. We presently have 145 seized vessels along the Miami River, which are under various stages of the administrative process, and some vessels that are forfeited.

As of October 9 we held an auction for 32 of those vessels and 30 were sold.

Seventy-one out of 145 of those vessels are in dry dock status, and I would like to just show the map of the Miami River with the various legends.

Chuck.

Mr. WINWOOD. The green legend indicates the U.S. Customs Service's boats stored on the river, the green pins.

The blue legend indicates the U.S. Customs Service's boats stored in marina slips or in dry dock; 71, I think, are in dry dock.

The yellow pins represent 205 boats that are not those of the U.S. Customs Service—other types of vessels that are either in business, being worked on or in trade on the river—and, in addition to that, there was a count done on October 11, and in addition to the boats listed in the chart, there were an additional 571 boats on the river; that is, boats that were not Customs but that were associated with the river.

The letters that you see on the map here represent the locations of the various marinas that we utilize for the storage of boats.

There presently are 12 along the Miami River that are utilized by the Customs Service for the storage of boats.

Senator CHILES. That is an interesting chart, but when did you make it?

Mr. WINWOOD. The chart was made last week.

Senator CHILES. It was made last week?

Mr. WINWOOD. Yes, sir.

Senator CHILES. Did you have a chart before last week?

Mr. WINWOOD. Not like this, no, sir.

Senator CHILES. Thank you.

CURRENT DEFICIENCES TO BE CORRECTED

Mr. KWAS. Senator, as you know, narcotics interdiction is one of our major priorities, and along with being successful in narcotics interdiction, there were some administrative problems.

While we have been remiss in the timely disposition of some of the vessels forfeited to the Government, our procedural defects have been completely identified.

Commissioner Von Raab has instructed me to correct all current deficiencies immediately, and to ensure that our future system operates efficiently, and all concerned parties have my assurance that this will happen.

As you have mentioned, we have a contract with Northrop which we are embarking on, and somewhere during that contract we will have an automated system to control all seized property—a nationwide system to control all seized property.

Senator CHILES. Somewhere during that contract?

Mr. KWAS. Yes, sir.

Senator CHILES. That is a 4-year contract.

Mr. KWAS. Well, the automated system will be developed as one of the first things, early on, but when it comes into being, I cannot

exactly tell you at this point, but that is one of the first priorities of the contract.

COST OF STORING BOATS

Senator CHILES. Can you tell me how much it costs now to store the boats nationwide?

I know that the figure here is three-quarters of $1 million, but——

Mr. KWAS. No, sir, I cannot.

Senator CHILES. Ms. McCauley, would you be able to answer that for me?

Ms. MCCAULEY. No, sir.

Senator CHILES. Would you try to get that information for me?

Ms. MCCAULEY. Yes, sir.

Senator CHILES. You are from Washington.

Ms. MCCAULEY. Unfortunately, Senator, our accounting codes do not separate out storage, cartage, and proprietorship of seized property from any other types of subcontracts, so I cannot go to our central financial management center and get that figure right now.

I tried to and I could not get it.

For you, though, we can do a survey with the district records, and we should be able to break it out, right down to the first line.

They know their contracts, and they know what is used for seized property and what is used for other types of merchandise.

NORTHRUP CONTRACT

Senator CHILES. Well, I find it a little bit hard to understand that Customs signed a contract for $44 million in August but does not know—that is $44 million over 4 years. How in the world would Customs enter into a contract like that if they do not know what it is costing them now?

Ms. MCCAULEY. We knew—from every other agency that looked at us—that we were doing a very bad job: the lack of maintenance, storage, et cetera.

We knew that we had problems, and that is why we decided to go outside and get this with another contract, and Northrop Inc. was one of the middle-priced bidders.

Going back to your last question, the question about the automated system, we will not be operational with the seized property until their automated system is in place, and we are hoping that it will be early in 1986.

They will have a full cost inventory, accounting, and property identification system for us.

Senator CHILES. Well, I still have a hard time understanding—even if they are the middle-priced bidder and not the low bidder—how you would know whether $44 million is a reasonable price to pay.

You had four or five bidders, which is fine, but if the Government does not know what it is costing to start with, and you are doing this to save some money, other than knowing that you were not doing it right, how would you know whether it is a good contract or not?

Ms. MCCAULEY. I would like to refer you to our Headquarters Director of Logistics, who may be able to better answer that question for you.

Senator CHILES. Very good.

Mr. BURROWS. Senator Chiles, I am Dan Burrows, and as Patty said, I am the Director of Logistics Management.

When we first examined the possibility of contracting this out—this was a recommendation from GAO and Congress was very much looking forward to our doing this—we tried to determine what those costs were, and they varied between $5 and $10 million.

We were able to determine that much, but we were not able to single out those costs that were specifically for seized vessels, seized automobiles, or seized aircraft.

I can tell you this: We seize over 1,200 vessels a year, over 6,000 vehicles a year, and over 600 aircraft a year.

Senator CHILES. Is this contract covering all of those things or just boats?

Mr. BURROWS. That is correct, Senator; it covers all, and it may, indeed, cover seized conveyances from other Federal agencies.

PROCESS OF DISPOSITION WILL BE SPEEDED UP

Senator CHILES. Other than being responsible for storage, what does this contract have to do with speeding up the process of disposition?

Mr. BURROWS. This contract, by having an automated system, will allow us to determine when things are eligible to be released and will push to get that release as soon as possible so that we will not be paying for storage and maintenance 1 day longer than we need to.

In addition, the——

Senator CHILES. Excuse me, but you do not do that in your normal management now; you do not track when something is available for sale now?

You do not do that in the regional places?

Mr. BURROWS. As Regional Commissioner Kwas pointed out, our primary mission is drug interdiction and drug enforcement.

We are doing such a fine job on that that we are in a position of being in a backlog in terms of the administrative part of that, and that is why we are contracting out for these services.

Ms. MCCAULEY. Senator, on a national basis, yes, many, many districts in the country do keep track of it and do know when things should go for disposition as soon as possible, but the busiest districts—the ones such as Miami, New York, and Los Angeles—have experienced problems.

We do not have an automated fines and penalties system in the Customs Service, and we have identified that need right to the Commissioner.

I believe that we are in the process of having one developed.

As far as what Northrop is going to do in comparison to the processing, Northrop will keep track of our property for us, but that will be separate and distinct from the forfeiture process, which will reside within the Customs Service, and we are developing a complimentary FP and F processing system within Customs.

Senator CHILES. That is one of my concerns, that this $44 million contract, as I understand it, is just to keep track of the property, but the Customs Service is still responsible for getting rid of it.

Ms. MCCAULEY. Customs will notify them to dispose of the merchandise, and how to dispose of it, and when to dispose of it.

Senator CHILES. Well, one of the problems is—I notice this year that the Customs Service requested 1,027 headquarters personnel, and that is more than all of the agents you have got in the field, so maybe we have got too many people in headquarters and we do not have enough in the region, where they can do the work.

VALUE OF VESSELS ENHANCED

Mr. BURROWS. I would like to point out one other thing about this contract, Senator, something that some people might not be aware of, and that is: This will be the first time that we actually have the ability to enhance the value of the vessels, so let us say that there is a vessel that, because of the paint job or because of some other reason, does not appear to be worth its value.

Northrop will then have the authority to actually do work if the value of the vessel will be enhanced more than double the work put into it.

Mr. KWAS. I think that, very simply put, Senator, our deficiency in the past has been that we have gotten it all the way through forfeiture and got it to disposition, and when we got the disposition back, we did not have a timely system to ensure an immediate sale and prevent some of the storage charges that you have pointed out here, and, hopefully, this automated system will give us enough of a flag now to say, hey, this thing has gone far enough, and it is over its time.

Of all the vessels that you have here, 5 out of 6 will be sold at the next auction.

Senator CHILES. That is good, but if we are talking about 5 out of 6 and if we are talking about 14 of the derelicts that are on the river itself—or whatever that number is—that is not that big a problem that we have got to have an automated system that we are going to pay $44 million for, is it?

Mr. KWAS. This is just one of the byproducts of the system.

Senator CHILES. All right. I understand.

Mr. BURROWS. I would like to address those 14, too, if I may, Senator.

When we wrote you that letter, we took the definition of that to be, "Vessels on the river that were congesting the river, and so on and so forth," and that was what we had on that day.

Of these 145 vessels that you saw today, a lot of them are in slips, and about half of them are in dry dock, so we gave you the wrong impression.

Mr. KWAS. Senator, if I may clarify something. That $44 million contract covers all seized property except narcotics and weapons.

Senator CHILES. Well, my letter to you, of course, concerned the number of vessels, and I notice that you said, "The Miami District Office of the U.S. Customs Service has been doing everything possible to expedite the disposition of these vessels, and from 1984 to date, 37 vessels stored on the Miami River have been sold or auc-

tioned, and in addition, 2 such vessels have been sunk at sea, and 50 have been released. At present, there are only 14 vessels stored on the river and under the jurisdiction of this Agency."

You are now saying that was not the total number of vessels.

Mr. KWAS. No, sir; the total number is 145, Senator, and the reason that we gave you the 14 was because your initial letter to us made reference to a Miami River Commission letter in which is made reference to vessels which were congesting the river, and we took that as a literal interpretation and gave you the 14 where you would really have a problem in navigating on the river, but there are 145 tied up in the various marinas and 71 in dry dock, and as our legend shows, between the three categories——

Senator CHILES. Under the new law, any boat seized in drug traffic, or any boat seized for any reason, of a value of under $100,000 can be forfeited by the administrative process, instead of going through the courts, but if a bond is placed on the vessel, it is kicked into the judicial process.

Our review of the action on the 199 vessels seized in 1985 showed that only 1 case went into the judicial process and 17 were subsequently referred to the judicial process.

In other words, 91 percent of your cases are administrative, and, therefore, we cannot say that they are the problem of the courts or the inadequacies of the forfeiture law.

QUICK SALE ACTION CASES

How many of these administrative cases have you completed a quick sale action on?

Mr. KWAS. On the quick sale, Senator, we have 3 at the U.S. attorney's office now—before the court—so I have to say that 122 out of 199, or 62 percent, have been summarily forfeited, and we are still in the disposition stage with many of them.

Senator CHILES. They have been summarily forfeited, but you still have possession of them, and they are part of the boats that we are paying the storage fees on and part of the boats that we are concerned about that are on the river.

Mr. KWAS. Some of them have been sold, I believe, of the 122 boats—this year.

Senator CHILES. Of the 122 of the 199 seized vessels that have been forfeited, how many have actually been sold or put up for auction?

Mr. KWAS. There are 25 that have been sold or that were on this auction or will be on the next one in November.

Senator CHILES. That leaves 97 that still have not been disposed of, and you said something about hoping to get rid of them by when?

Mr. KWAS. Well, I think that with the procedures and the corrections that we are going to make to the system, aside from anything that is in judicial forfeiture, the flotilla boats and the foreign flag boats, where the State Department is in negotiations with the appropriate governments, we would hope to have everything else pretty well cleaned off the river except those in those categories.

Senator CHILES. You are hoping to do that by when?

Mr. KWAS. We are hoping to be able to do that within the next 6 months, Senator.

Senator CHILES. Within the next 6 months?

Mr. KWAS. Yes, sir.

Senator CHILES. As you know, the summary sales section of the Forfeiture Act permits the Customs Service to go to a quick sale on any assets that are likely to depreciate so quickly as to be uneconomic to keep.

To read you the section of the law, it says: "Whenever it appears to the appropriate Customs official that any Customs law is liable to perish, waste or be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and the vessel is subject to the provisions of section 1607 of this title, and such vessel, vehicle, aircraft, merchandise or baggage has not been delivered under bond, such officer shall proceed forthwith to advertise and sell the same at auction under the regulations to be prescribed by the Secretary of the Treasury."

Prior to the quick forfeiture law, the quick sale provision only applied to vessels under $10,000 in value.

Mr. KWAS. Yes, sir.

QUICK SALE PROVISION NOT USED

Senator CHILES. Did the Customs Service in Miami ever use the quick sale provision for any vessels seized prior to October 12, 1984?

Mr. KWAS. I would like to have our regional counsel answer that, Senator.

Mr. FRIEDLAND. We have attempted to use the quick sale provisions judicially in the past, and we have had very poor luck with it.

The courts viewed that as a Customs' administrative problem, and not their problem.

For vessels under $100,000, which the law now allows us to handle, we are in the process of promulgating regulations, and we expect to be able to do that administratively in the very near future.

My understanding is that those regulations are on the Commissioner's desk, and we should have those available to us very soon.

Senator CHILES. Well, I guess that the answer to the question is no, you did not ever try to do it with a vessel under $10,000.

You had the law, and we have changed it now and gone from $10,000 to $100,000, and I understand that you have a lot of vessels up there in dry dock somewhere that are valued at under $10,000.

Did you ever try to use a quick sale action on any of those?

Mr. FRIEDLAND. Not with the new law, no, sir—not yet, but when we have the regulations, we intend to do that.

Senator CHILES. I am trying to find out about with the old law. The new law is only a change in dollars.

It is the same law, but now, rather than giving you $10,000, we are giving you $100,000.

Mr. FRIEDLAND. We have used it in the past, yes, sir. And we have been successful in only one instance that I know of, and that was with a very valuable sailing vessel, the *War Cry*.

What the courts do—as you know, we have one of the busiest dockets in the Nation, criminally.

Senator CHILES. With the quick sale, you do not have to go through the judicial process; it is a little different.

Mr. FRIEDLAND. Previously you did, and your question was concerning the time before the new law.

Senator CHILES. Previously, you had the same law with a different value; the law has not changed.

Mr. FRIEDLAND. We never attempted to use it on low value vessels, no, sir.

Senator CHILES. All right. Thank you.

The *Sportsman Two* was seized on January 27, 1982, and it had an appraised value of $1,497, and we understand that you now propose to take the *Sportsman Two* out and sink it on the artificial reef.

Why was the quick sale law not used on the *Sportsman Two?*

Mr. KWAS. Right now, Senator, we still cannot do anything with the *Sportsman Two;* it is still in litigation with the flotilla vessels in court.

Senator CHILES. You cannot use the quick sale——

Mr FRIEDLAND. No, sir; we would have to go to court and ask——

Mr. KWAS. It has been subject to litigation.

Senator CHILES. You have got on your paper to us: "Destruction order issued 10/7/85," so what legal process is that in, if you have ordered destruction on it?

Mr. KWAS. Senator, I signed the destruction order on it on October 7, but we had to rescind that, because we found out that the boat was a flotilla boat, and there are two court cases on it, so we just could not destroy it.

At the time when that was provided, that is what we had intended to do with it.

Senator CHILES. Your records were such that you did not know that it was a flotilla boat?

Mr. KWAS. It was the second time around for it; it was seized under a separate law, and it was released under constructive seizure.

We did not know that it was in court at the time when we signed the destruction order.

Senator CHILES. If the case does not go to court, and we know that of the vessels seized in Miami since the new law passed less than 10 percent go through the court process, the vessel can be disposed of within 3½ months. The 21-day notice of seizure to potential owners and lienholders, followed by a public notice of the intention to sell the vessel, which takes 30 days.

Following this, under the new procedures, Customs would have 1 week to decide if they want it, and, finally, GSA would have 45 days within which to let Federal agencies decide if they want the vessel.

This is, of course, the way that the system is supposed to work, but we know of cases that have taken almost 3 years for Customs Headquarters to screen.

8 TO 9 MONTHS REQUIRED FOR DISPOSAL

Can you give us a success story—if you know of one—that took something like 3½ months?

Mr. KWAS. Well, the only thing that I can say is under the new law, we have been averaging about—under the new seizures, with about 85 cases—about 4 months; we have been averaging about 4 months, so we are forfeiting them quickly.

Senator CHILES. Is that 4 months to forfeiture, or is that 4 months to disposal?

Mr. KWAS. Forfeiture.

Senator CHILES. Forfeiture?

Mr. KWAS. Yes, sir; there is a big difference.

Senator CHILES. Yes, there is a big difference, because what I am saying is you have a 3½-month procedure now—if you follow it every time—until disposal.

You are now telling me that you are going to forfeiture in 4 months, and there is the big difference.

Mr. FRIEDLAND. Well, I am realistically advising that we are taking 4 months to forfeit summarily——

Senator CHILES. How much time are we taking, realistically, through disposal?

Mr. FRIEDLAND. Through disposal?

Senator CHILES. Yes.

Mr. FRIEDLAND. I think we are talking about 8 to 9 months, normally.

Senator CHILES. Do you think we are talking about that short a time?

Mr. FRIEDLAND. If everything is clicking right, and we hit that particular auction, yes.

If we have to defer to the next auction, we might be talking about 12 months.

Mr. KWAS. Senator, we had a boat—the *Delta*—that was seized on July 8, 1985, which was about 3 months ago, and it was summarily forfeited on September 3, 1985, and now the form for disposition has been issued and is presently up with headquarters.

We are hoping to have this done by the middle of November, and that is about a 4-month procedure.

If you want to talk about a success story, I guess we could be ready to dispose of this one at some time in November.

Senator CHILES. Well, there are 64 boats on the river, and based upon information that your office gave us, where boats have been seized and the forfeiture process has been completed years ago, no action has been taken, and in all cases the boats are still here on the river.

BOAT SITS 3.5 YEARS WITHOUT DISPOSITION

For example, one boat, and this is case No. FL-73114-EA, was seized on February 2, 1982, which was over 3½ years ago.

The paperwork to begin disposition was started in September of 1982, which was 3 years ago, and Customs did not respond until October 5, 1985, and there is still no action on the vessel.

In my mind, there is a monumental problem in the Customs Service's system that will allow a seized boat to sit on the river for over 3½ years after it has been forfeited, with no disposition.

Can you tell us how much it has cost to keep that boat moored since February 8, 1982, and how we explain a case like this?

Mr. KWAS. The estimated cost to date on it has been $12,276, in storage, and the answer to your question is: Did we have correct procedures? No, and that is where our system broke down.

Senator CHILES. I understand that your new goal is to give the Customs Service's headquarters a week to decide whether it wants the boat—after forfeiture—and GSA will then have 45 days.

In other words, 52 days after forfeiture, the vessel will be available for sale or auction. Am I correct on those numbers?

Mr. KWAS. Yes, sir.

Senator CHILES. Do you have a high degree of confidence that these new timetables are going to be met?

Mr. KWAS. I think we will come reasonably close, Senator.

Senator CHILES. Eleven boats are apparently still in the midst of the Customs Service's administrative process, or working toward forfeiture; some 13 were seized over 3 years ago—1 as long ago as 1979; 7 were seized in 1981, which was 4 years ago.

Surely the taxpayers are paying for mooring and related costs which far exceed the possible return on these boats.

How can it take almost 6 years to get rid of one boat, the *Mr. White*?

In another case, the boat named the *Ogun*—O-g-u-n—was mistaken for a boat from the Mariel boatlift, and no action was taken for almost 4 years, even though the boat was seized in December of 1981?

SERIOUS SHORTCOMINGS INDICATED

Do these kinds of examples again indicate what we are calling serious shortcomings in the procedures of the Customs Service relating to the storage of property?

Mr. KWAS. I believe that is the reason that we approached this with a contract basis, Senator.

I think we realized that some of these shortcomings were there.

Senator CHILES. I have a hard time understanding how much staff time it would take to follow 11 boats or 13 boats.

Mr. KWAS. Well, normally, 11 boats or 13 boats are not a problem, but we have over 500 seized boats in this district, so the 11 of 13 that went old—we missed them, but we have over 500 boats, and I do not want to have any misimpressions on that.

Senator CHILES. Based upon your records, there are 25 vessels that you consider to be outside of your control—either foreign flag vessels seized by the Coast Guard on the high seas, and their disposition must be coordinated by the State Department, or the flotilla boats caught up in the process, or they are awaiting court action.

For all of these boats that are so-called outside of your control, we have been told by your staff that the Customs Service has the authority to move the boats out of the Miami River and to store them in another location; is that correct?

Mr. KWAS. Yes, I think we can move them.

That is, if they are able to go.

NO PETITION FOR QUICK SALE SINCE 1982

Senator CHILES. In cases awaiting court action—some since 1982—you can petition the court for a quick sale; is that correct?

Mr. KWAS. Yes.

Senator CHILES. Have you ever petitioned the court for a quick sale——

Mr. FRIEDLAND. Yes, I have.

Senator CHILES [continuing]. On any of these boats?

Mr. FRIEDLAND. Yes.

Senator CHILES. On how many?

Mr. FRIEDLAND. Since 1982?

Senator CHILES. Yes.

Mr. FRIEDLAND. No, sir; we have had such poor experience with the quick sale procedure prior to that I have not tried it since.

Senator CHILES. How about under the new law?

Mr. Friedland, it seems to me that the law is not permissive; it says, "Such officer shall proceed forthwith to dispose of the boat."

Mr. FRIEDLAND. Yes, sir; if it appears that the administrative procedure is moving along and that it is not necessary to either go to the court or to add some more administrative procedure, it does not seem like that is the proper thing to do.

We try to do the thing that is most expeditious, and it depends upon the circumstances of the case.

Senator CHILES. Well, I would ask you to read that law again, because it seems like it is sort of directing you.

Mr. FRIEDLAND. Yes, sir.

Senator CHILES. I understand that you had 32 boats up for auction last week and that you sold 30 of those; is that correct?

Mr. KWAS. Yes, sir.

Senator CHILES. As a result of that, how many can we expect to be moved out of the Miami River?

Mr. KWAS. I think that is a function of the people who bought them, sir, when they come to pick them up.

Senator CHILES. Customs will not be paying the storage fees any longer?

Mr. KWAS. When they finally come to pick them up, that will take care of it.

Senator CHILES. When does Customs stop paying the storage fees?

Mr. KWAS. I believe that it is at the point of the sale.

Senator CHILES. As of the time of the sale?

INVENTORY OF BOAT EQUIPMENT

Mr. KWAS. Yes.

Senator CHILES. Tell me something about your warehouse.

[No response.]

Senator CHILES. I understand that it is pretty big and chock full of almost everything.

Mr. KWAS. Yes.

Senator CHILES. What is the inventory in the warehouse—tell me, basically—and what is it worth?

Mr. KWAS. Which warehouse are you referring to, sir?

Senator CHILES. The one that you are taking all of the radios, sonar equipment, and other equipment off of the boats to?

Mr. KWAS. No.

Senator CHILES. I understand that most of these boats that you seize you take a lot of the equipment off of, rather than allowing them to be vandalized, so can you tell me what that inventory is and what it is worth?

Mr. KWAS. Not off the top of my head. I cannot do that. I cannot tell you what the inventory is worth.

Senator CHILES. Do you have one?

[No response.]

Senator CHILES. Do we know that, or is that another one of the things that has slipped through the cracks, and that we do not have any records of?

Mr. KWAS. That merchandise is not appraised because there is so much miscellaneous stuff.

Senator CHILES. Do you have an inventory?

Mr. KWAS. We do have an inventory.

Senator CHILES. You do have an inventory?

Mr. KWAS. Yes.

Senator CHILES. I would like to get a copy of that inventory.

Mr. KWAS. You certainly will.

[Staff note: A copy of the inventory was not provided in spite of repeated requests for it.]

Senator CHILES. I understand that you strip the boats when you first seize them in an effort to keep thieves from the most expensive sonar, guidance, and steering equipment.

Do you put that equipment back on the boats before you sell them, or offer them for sale, or what do you do with that equipment?

Mr. KWAS. That is offered for sale.

Senator CHILES. It is put back on the boats?

Mr. KWAS. Yes.

Senator CHILES. If I come back here 6 months from now and we hold another hearing here, Mr. Kwas, what are you going to be able to tell me?

Mr. KWAS. A lot better than what we told you today, Senator, on disposition, and hopefully everything that is on the river then will be in some stage that we really—that we have forfeited it and disposed of everything properly.

Senator CHILES. Well, that is a good offer that you are making me, so I am going to take you up on it.

Mr. KWAS. OK.

Senator CHILES. I am going to be back here in about 6 months——

Mr. KWAS. All right, Senator.

Senator CHILES [continuing]. To see what you are doing.

We thank you for your appearance here today.

Mr. KWAS. Thank you, Senator.

Senator CHILES. At this point in the record I would like to insert the graphics we have on display this morning illustrating how the breakdown of the customs process is wasting Government dollars.

BOAT SEIZURE LIST

VESSEL:	CARY	
DATE FORFEITED TO CUSTOMS:	OCTOBER 31, 1983	
CURRENT STATUS:	STILL IN INVENTORY	
STORAGE COST:		$6,293
VALUE AT SEIZURE:	$28,000	
CURRENT VALUE:	-$10,000	
LOST:		$18,000
GOVERNMENT DOLLARS WASTED:		$24,293

VESSEL:	ECHO II	
DATE FORFEITED TO CUSTOMS:	AUGUST 10, 1982	
CURRENT STATUE:	STILL IN INVENTORY	
STORAGE CUST:		$11,310
VALUE AT SEIZURE:	$40,500	
CURRENT VALUE:	-$30,000	
LOST:		$10,500
GOVERNMENT DOLLARS WASTED:		$21,810

VESSEL:	SPORTSMAN II	
DATE FORFEITED TO CUSTOMS:	OCTOBER 24, 1982	
CURRENT STATUS:	STILL IN INVENTORY	
STORAGE COST:		$10,464
VALUE AT SEIZURE:	$1,497	
CURRENT VALUE:	$ - 0 -	
LOST:		$1,497
GOVERNMENT DOLLARS WASTED:		$11,961

VESSEL:	BORZOI	
DATE SEIZED:	MAY 24, 1983	
STATUS SINCE MAY 24, 1983:	FILE LOST BY CUSTOMS	
CURRENT STATUS:	STILL IN INVENTORY	
STORAGE COST:		$10,229
VALUE AT SEIZURE:	$75,000	
CURRENT VALUE:	-$40,000	
LOST:		$35,000
GOVERNMENT DOLLARS WASTED:		$45,229

55-592 0 - 86 - 3

VESSEL:	LADY DOLLY	
DATE FORFEITED TO CUSTOMS:	MARCH 30, 1983	
CURRENT STATUS:	STILL IN INVENTORY	
STORAGE COST:		$8,189
VALUE AT SEIZURE:	$168,800	
CURRENT VALUE:	-$10,000	
LOST:		$158,800
GOVERNMENT DOLLARS WASTED:		$166,989

VESSEL:	MONICA	
DATE FORFEITED TO CUSTOMS:	JUNE 7, 1982	
CURRENT STATUS:	STILL IN INVENTORY	
STORAGE COST:		$9,166
VALUE AT SEIZURE	$41,000	
CURRENT VALUE	-$15,000	
LOST:		$26,000
GOVERNMENT DOLLARS WASTED:		$35,166

OTHER FEDERAL WITNESSES

Senator CHILES. We will now go to the Corps of Engineers, and Col. Charles T. Myers III, the district engineer for the Jacksonville district, will lead the panel.

We will also get the Coast Guard representatives up here as well and the INS representatives.

We have Mr. Steve Duca, who is the chief of staff of the seventh district of the Coast Guard, with us, and Comdr. Rene Roussel, who is the captain of the port.

We are glad to have you folks with us.

From the Immigration and Naturalization Service we have Mr. Howard Rose, who is the district counsel.

Gentlemen, if you would lead off with Colonel Myers, again, your statements in full, will be put in the record, but if you will digest those for us, it will be helpful.

STATEMENT OF COL. CHARLES T. MYERS III, DISTRICT ENGINEER FOR THE JACKSONVILLE DISTRICT, U.S. ARMY CORPS OF ENGINEERS, ACCOMPANIED BY JIM HILTON, CHIEF OF OPERATIONS, AND CHUCK SCHNEPEL, MIAMI REGULATORY OFFICE

Colonel MYERS. Thank you, Senator.

Senator, I have two members of my staff with me that I would like to introduce: Mr. Jim Hilton, on my right, who is the chief of operations of the district; and Mr. Chuck Schnepel, to my left rear, who is from the Miami regulatory office.

Senator CHILES. We are glad to have you folks here with us.

Colonel MYERS. Sir, I will shorten mine up considerably.

The Corps of Engineers is responsible, under the Rivers and Harbors Act of 1899, and the Clean Water Act, to provide regulatory service on the river, and that would include any construction in the river or any fill material that is placed in the river.

In addition to that, we have the responsibility to maintain the authorized Federal channel in the river, and in that regard, we do dredging, when required, to maintain the authorized depth.

That summarizes very quickly what I have got in my statement.

Senator CHILES. Thank you, Colonel Myers.

[The prepared statement of Colonel Myers follows:]

TESTIMONY OF

COLONEL CHARLES T. MYERS, III

14 OCTOBER 1985

Good morning, Mr. Chairman. I am Colonel Charles T. Myers, III, District Engineer for the Jacksonville District, U.S. Army Corps of Engineers. I am pleased to appear at your hearing exploring ways to help clean-up the Miami River. With your concurrence, I would like to give a brief opening statement on the Corps of Engineers authority and responsibilities as they relate to the Miami River. Following this, I would be more than happy to answer any questions.

The Corps of Engineers' authority stems from several legislative acts that go all the way back to 1899. First is the River and Harbor Act of 1899 which, under Section 10, gave the Corps regulatory authority over any work in navigable waters of the United States to ensure that these structures do not interfere with navigation. The same act also gave the Corps the authority, under Sections 15, 19 and 20, to ensure removal of sunken vessels and/or obstructions from navigable waters of the United States. Section 404 of the Clean Water Act, also gave the Corps regulatory authority over the discharge of dredged or fill material in waters of the United States. Individuals desiring to place a structure and/or fill in waters of the United States must first obtain a permit from the Department of the Army, Corps of Engineers.

In regard to sunken vessels, obstructions and/or debris in a waterway, the Corps authority for removal is under Sections 19 and 20 of the River and

Harbor Act. The sunken vessel, obstruction and/or debris must be a hazard or an obstruction to navigation which usually means the vessel must be located in or immediately adjacent to the Federal navigation channel in order for the Corps to remove it. The Corps has neither the authority to move or direct the removal of moored floating vessels, unless the vessel is moored in a Federal navigation channel.

The Corps works closely with the U.S. Coast Guard to ensure that sunken vessels, obstructions and/or debris are properly marked and lighted until removal. The Corps also works with the U.S. Coast Guard in making determinations on whether the sunken vessel, obstruction and/or debris is a hazard to navigation.

The Jacksonville District was authorized to construct and maintain a navigation channel in the Miami River under a Congressional Act of July 3, 1930. Although authorized under separate legislation, the Miami River project is part of the Miami Harbor project. The Port Authority of Miami is the local sponsor for the entire project. The Jacksonville District works closely with the Port Authority to ensure that these Federal Navigation Channels remain open to navigation. The Miami River Federal Navigation Channel provides for a channel 15 feet deep under flood conditions. The authorized channel is 5.5 miles long from the mouth to the salinity control structure located at approximtely 36th Street. The authorized channel width varies from 90 feet at the upstream end to 150 feet, approximately three miles downstream from the salinity control structure. As I stated previously, the authorization for a 15-foot deep channel is under flood conditions. This flood level condition as a datum is unique and the only

navigation channel authorized in the Jacksonville District with a depth referenced to a flood level datum plane. All other navigation channels are referenced to a mean low water datum plane. The Jacksonville District records of Miami River show that the authorized depths, based on the flood condition datum plane, are -11.1 feet mean sea level at the dam and -15.7 feet mean sea leel at the mouth of the river. Hydrograhic surveys taken in December 1984 indicate only minor shoaling, approximately 2000 cubic yards, in the vicinity of N.W. 32nd Street. The Corps is not authorized to maintain projects for vessels requiring depths in excess of those authorized by Congress.

Mr. Chairman, this concludes my prepared remarks on the Corps authority on responsibility for the Miami River. I will be glad to answer any questions you may have.

DREDGING STUDY TO BE FINISHED IN 1986

Senator CHILES. All right, sir.

Colonel, we know that the corps has been doing a study, or looking at the river, and determining whether some dredging is needed that would help to get rid of some waste, but which at the same time might be necessary for navigation.

Colonel MYERS. Yes, sir.

Senator CHILES. How is that study coming along?

Colonel MYERS. The study, sir, will be finished in early calendar year 1986, but it does not have anything to do with dredging for navigation; it is purely looking at the potential to dredge polluted material from the river.

It is not complete at this time, but it will be completed in draft early in calendar year 1986.

Senator CHILES. Early in calendar year 1986?

Colonel MYERS. Yes, sir.

Senator CHILES. What rcle can the corps play in removing sunken vessels from the river?

Colonel MYERS. Sir, if those vessels constitute a hazard to navigation, we will give a mark-and-remove letter to the owner, and attempt to have him remove the vessel.

We make the determination of the hazard to navigation in close conjunction with the Coast Guard, and if it is a hazard, and he will not remove it expeditiously, we will remove it and attempt to bill him for it.

Senator CHILES. We understand that the Dade County Department of Public Works has two boats that patrol the river and that remove debris.

I understand that the corps does not have the authority to remove debris from the river; is that correct?

Colonel MYERS. That is correct, sir, unless there is debris which constitutes a hazard to navigation.

Senator CHILES. Unless it constitutes a hazard to navigation?

Colonel MYERS. Yes, sir.

Senator CHILES. On the other hand, I understand that there are some ports where, by law, you do have the authority to remove debris; is that correct?

Colonel MYERS. Yes, sir; there is specific authorization in some cases for that, which we do not have here.

Senator CHILES. You do not have that specific authorization here?

Colonel MYERS. No, sir.

Senator CHILES. If you had that in the law, then you could remove it here?

Colonel MYERS. Yes, sir.

Senator CHILES. All right, sir. We will now go to our Coast Guard representatives.

STATEMENT OF STEVE DUCA, CHIEF OF STAFF, SEVENTH COAST GUARD DISTRICT, ACCOMPANIED BY COMDR. RENE ROUSSEL, CAPTAIN OF THE PORT

Captain DUCA. Good morning, Senator.

Senator CHILES. Good morning, sir.

Captain DUCA. The Coast Guard has a number of statutes that, as you know, give us authority with respect to marine transportation and safety. They are contained in the statement, and I will be ready to answer any questions that you might have, sir.

Senator CHILES. All right, sir. I understand that all of the vessels which stay in the river for over 71 hours have to file a layup plan for Coast Guard approval, and the plans are to ensure that the vessels are properly moored and do not become navigation or safety hazards, and that heavy fines are provided for noncompliance with these plans.

I understand that on January 17, 1985, the Vessel *Andio*, which was being stored by a Customs vendor, broke loose from its mooring and was drifting toward the 22d Avenue Bridge, completely blocking the river before it was secured.

It had apparently been tied to trees, in violation of Coast Guard layup procedures.

Your statement noted that you have only 11 vessels with layup plans.

Customs states that they have 74 boats in the water, and almost all of those have been there for more than 72 hours.

Why would they have 74 vessels in the water when you have only got 11 layup plans?

Captain DUCA. The requirements for a layup plan, in terms of 72 hours, I believe is not quite accurate, sir, and I think I will have Commander Roussel, the Captain of the Port, who knows the specifics, provide you with them—with the specifics.

REQUIREMENTS FOR 72-HOUR LAYUP PLAN

Commander ROUSSEL. Yes, sir. We require the vessels to contact us if they are going to be in port and not handling cargo in excess of 72 hours.

Our plans are geared toward commercial vessels over 100 gross tons. We do not get involved with Customs seized vessels. Our plans are toward private vessels.

Does that answer your question, Senator?

Senator CHILES. Why would you not be involved with the Customs-seized vessels for a layup plan?

Commander ROUSSEL. We treat the vessels that are seized by the United States as though they were public vessels.

Our plans are maritime commercial plans, and they do not apply to what we consider a public vessel.

Senator CHILES. Well, it seems to me if a boat is going to be tied to trees, and it is a potential navigational hazard and a potential danger—whether it is a Customs-seized vessel or whether it is a private vessel—what is the reason for the layup plan if we are not trying to do something to protect the general navigation and safety of the river?

Commander ROUSSEL. We have provided Customs with our plans, with the general rationale, in the hopes that they might adopt some of the procedures with their custodians.

Senator CHILES. It seems that it is kind of wishful thinking to believe that all of those people are going to comply with the layup plans, or with the general procedures, if there is no enforcement or follow up.

You are saying that, just because it is Customs, one Government agency will not look at another Government agency, so to speak, even though these are actually private individuals, or private vendors, who are deciding whether they are storing the vessel or not.

Commander ROUSSEL. Yes, sir, but I am saying that the vendors are working for the Federal agency that has possession of the vessel, and they are in the nature of a public vessel as far as we are concerned.

Senator CHILES. The commercial vessels that are over 100 gross tons, that is just your regulations; is that correct?

Commander ROUSSEL. Yes, sir, but it is not a regulation; it is a recommendation.

Our layup procedures are in the form of recommendations, and if they are not complied with, I issue a Captain-of-the-Port Order under the Federal Water Pollution Control Act, which gives me authority then to cite up to $25,000 a day.

Senator CHILES. Well, it just seems to me, unless we have some way of knowing that the Customs Service is complying with this, with whatever number of boats they have on the river, we are leaving an awfully lot of fall-through cracks, and that is what happens, in effect, when you have a vessel that breaks its moorings.

Captain DUCA. That is correct, Senator, but the layup plans are to protect the waterway in terms of its navigation, safety, and pollution. The case that you cite obviously was a case where those protections failed.

It is the responsibility of the owner or custodian of the vessel to meet the Coast Guard's layup requirements, and we pass those to the appropriate agency, or to the owner, as required.

NO FINES FOR CUSTOMS-SEIZED BOATS

Senator CHILES. But you could not fine someone who failed to meet those requirements if he were a Customs vendor and you never required a layup plan of him, could you?

Captain DUCA. I am not sure about that, so I would have to defer to the technical expert.

Commander ROUSSEL. Yes, sir. We would not be able to fine for a violation of our lay-up procedures against a Customs-seized boat.

Senator CHILES. You would not?

Commander ROUSSEL. We would not be able to do that.

Senator CHILES. If you required a layup plan from him, you could.

Commander ROUSSEL. No, sir.

Senator CHILES. Why not?

Commander ROUSSEL. We could not fine another Federal agency under these procedures.

Senator CHILES. Why could you not fine the vendor?

[No response.]

Senator CHILES. Why can you not require the vendor to comply and to file a layup plan?

Commander ROUSSEL. The vendor is in contract with Customs; do you understand the relationship?

Senator CHILES. I understand the relationship.

Commander ROUSSEL. Well, we also have given these procedures to the U.S. Marshall's Service in the hopes that the courts would require their custodians to use them as guidelines.

Senator CHILES. Are the people from the Customs Service still here?

Mr. KWAS. Yes, sir.

Senator CHILES. Why can Customs not require a vendor to have a layup plan and have that be part of the contract?

Mr. KWAS. I do not know, sir. We will have to look into that.

Senator CHILES. Answer that for me when I come back.

Mr. KWAS. Sure.

Senator CHILES. It seems to me the one reason for the lay-up plan is to provide safety for the navigation of the river, and if we are going to have none of the Government people—we know that Customs has boats, and the State Department has boats, and these other agencies have boats, but if we do not require lay-up plans from their vendors, I do not know what you are requiring lay-up plans for, or what you are doing, and it does not make any sense to me.

MARINE SANITATION NOT BEING ENFORCED

The Coast Guard requires any vessel operating in Federal waters to have Coast Guard-approved marine sanitation devices, and in the Miami River, which is Federal water, we have been told that the Coast Guard does not make regular checks for approved

marine sanitation devices; is that correct—or do you make regular patrol checks?

Captain DUCA. We do not make specific inspections of uninspected vessels for this type of equipment.

Senator CHILES. Why not?

Captain DUCA. The matter is a matter of policy determination by the Coast Guard, Senator.

Let us say that headquarters has determined that the inspection of uninspected vessels, which of course all of the smaller vessels are, is something that we do not have the resource base to take care of.

Senator CHILES. You do some patrolling of this river, do you not?

Commander ROUSSEL. Yes, sir.

Senator CHILES. You have got people who are here every day; is that correct?

Captain DUCA. We patrol the river about twice a week on the average, Senator.

Senator CHILES. About twice a week?

Commander ROUSSEL. Yes, sir.

Senator CHILES. When they are going up and down that river twice a week, they cannot stop and look at one of these vessels to see whether it has got marine toilet facilities on it, or whether it is dropping the raw sewage right into the river?

[No response.]

Senator CHILES. People have pointed out to me that some of the Haitian traffic that comes through here has nothing in the way of sanitation facilities; that they have crews and people on those boats all the time, and they are dumping raw sewage right into the river.

Captain DUCA. Let me handle that in two parts, if I may, Senator.

Senator CHILES. Yes, sir.

Captain DUCA. As our boats inspect, if they sight any violations, they immediately take care of citing the vessel for its violation, whatever that violation might be: Pollution, navigation safety or whatever. So as our boat does inspect the waterway, as it were, it does enforce appropriate laws.

With respect to the specific case of the Haitian vessels that you mentioned, knowing of your interest, we did go aboard those vessels last week, and we did find certain of them—a few of them—in violation of regulations, and we cited them for them, and we are processing civil penalty actions against those vessels.

In the course of our normal patrols, and in the course of a normal boarding during that patrol, we would, of course, inspect that particular vessel for applicable Federal laws.

As a matter of policy, we do not go aboard vessels specifically to inspect for marine sanitation devices, and that is for all uninspected vessels.

TWENTY-FIVE PERCENT OF BOATS ARE IN VIOLATION

Senator CHILES. When you made the check at my request this last week, you did find how many vessels with violations?

Captain DUCA. I would have to ask the captain of the port to give you the specifics, but there were a few.

Commander ROUSSEL. Yes sir; we boarded approximately 15 to 18 boats, and 3 or 4 out of that number—I do not have the exact number—had violations.

A violation would consist of having a toilet facility that has a straight discharge into the river.

In those instances, they had the toilets chained closed, but we required that they have a marine sanitation device or a holding facility on the vessel, so it was a violation, even though they inferred that they were not using it.

We required that they either correct them or we would penalize them sufficiently.

Senator CHILES. Well, it would seem to me that, in your regular patrols—not to say that you should stop every vessel to see whether it has a toilet—you ought to be looking at those vessels' navigation equipment, because certainly if one of them runs into something else because it does not have navigation equipment or other things, as well as pollution devices, they certainly are dangerous.

If you found three or four, you are roughly talking about almost 25 percent of the boats that you checked—that they had violations and, in effect, could have polluted the river.

Commander ROUSSEL. Yes, sir.

Senator CHILES. The Coast Guard has authority over oil spills and pollution.

Commander ROUSSEL. Yes, sir.

Senator CHILES. How does the Coast Guard assure that moored vessels are not leaking oil into the river?

Captain DUCA. We assure that by vessel patrols and by the implementation of the regulation itself.

When we get a report of a spill from whatever source, we immediately take actions to have the owner of the vessel or the facility clean the spill, and if no polluter can be found, we immediately invoke the provisions of 311-K and have a contractor, under Coast Guard supervision, clean the waterways.

Senator CHILES. Thank you, Captain Duca.

[The prepared statement of Captain Duca follows:]

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD
STATEMENT OF
CAPTAIN GENNARO S. DUCA
CHIEF OF STAFF, SEVENTH COAST GUARD DISTRICT

GOOD MORNING. I AM CAPTAIN GENNARO S. DUCA, CHIEF OF STAFF,SEVENTH COAST GUARD DISTRICT, MIAMI, FLORIDA. WITH ME IS COMMANDER RENE ROUSSEL, CAPTAIN OF THE PORT, OFFICER IN CHARGE MARINE INSPECTION AND COMMANDING OFFICER, MARINE SAFETY OFFICE MIAMI, FLORIDA. I APPRECIATE THE OPPORTUNITY TO DISCUSS THE COAST GUARD'S RESPONSIBILITIES WITH REGARD TO THE MIAMI RIVER. THE COAST GUARD IS A MEMBER OF THE MIAMI RIVER MANAGEMENT COMMITTEE AND WORKS CLOSELY WITH LOCAL, STATE, AND OTHER FEDERAL AGENCIES IN EFFORTS TO IMPROVE THE NAVIGATION AND ENVIRONMENTAL CONDITION OF THIS WATERWAY.

AS YOU KNOW, THE COAST GUARD IS A MULTI-MISSION SERVICE WITH MANY RESPONSIBILITIES WHICH RELATE TO MARINE TRANSPORTATION AND SAFETY. OUR SPECIFIC RESPONSIBILITIES AND AUTHORITIES ARE CONTAINED IN A NUMBER OF THE POLLUTION PREVENTION, VESSEL INSPECTION, AND NAVIGATION LAWS AND TREATIES. WITH RESPECT TO PREVENTION AND MITIGATION OF WATER POLLUTION, SEVERAL LAWS APPLY. UNDER SECTION 311 OF THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED (33 USC 1321), THE COAST GUARD HAS BEEN DELEGATED ENFORCEMENT AND REMOVAL AUTHORITY AND RESPONSIBILITY IN CASES WHERE OIL OR HAZARDOUS SUBSTANCES ARE DISCHARGED IN U.S. WATERS, THE WATER OF THE CONTIGUOUS ZONE, AND OTHER OFFSHORE AREAS. THE COAST GUARD'S RESPONSIBILITIES REGARDING MARINE SANITATION DEVICES ARE ALSO MANDATED IN SECTION 312 OF THIS ACT (33 USC 1322). THE ACT TO PREVENT POLLUTION FROM SHIPS (33 USC 1901 ET SEQ.) IMPLEMENTS THE 1973 INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, AS MODIFIED BY THE PROTOCOL

OF 1978 (MARPOL 73/78), AND TASKS THE COAST GUARD WITH ITS ENFORCEMENT.

THIS CONVENTION LIMITED THE AMOUNT OF OIL THAT MAY BE DISCHARGED AT SEA AND ESTABLISHED REQUIREMENTS FOR THE INSTALLATION OF POLLUTION PREVENTION EQUIPMENT SUCH AS OILY WATER SEPARATORS AND BILGE DISCHARGE MONITORS. IT ALSO SETS FORTH REQUIREMENTS THAT ALL PORTS AND TERMINALS MUST HAVE SUFFICIENT WASTE RECEPTION FACILITIES TO ACCOMMODATE OCEAN GOING VESSELS SERVICED BY THE PORT OR TERMINAL.

THE REFUSE ACT (33 USC 407) IS ENFORCED JOINTLY BY THE COAST GUARD AND THE U.S. ARMY CORPS OF ENGINEERS AND HAS BEEN INTERPRETED TO PROHIBIT THE DISCHARGE OF VIRTUALLY ANY MATERIAL INTO THE NAVIGABLE WATERS OF THE UNITED STATES. WHEN VIOLATIONS OF THE REFUSE ACT ARE SUBSTANTIATED BY AN INVESTIGATION, THE U.S. ARMY CORPS OF ENGINEERS MAY BE NOTIFIED FOR APPROPRIATE ACTION. SINCE THE ACT PROVIDES FOR CRIMINAL SANCTIONS, THE COAST GUARD MAY INSTEAD REFER THE CASE DIRECTLY TO THE DEPARTMENT OF JUSTICE CHAPTER 37, TITLE 46 OF THE U.S. CODE AUTHORIZES THE COAST GUARD TO REGULATE BULK LIQUID TRANSPORTATION.

THE HAZARDOUS MATERIALS TRANSPORTATION ACT, TITLE I OF THE TRANSPORTATION SAFETY ACT OF 1974 (49 USC 1801 ET. SEQ.), AUTHORIZES THE REGULATION OF HAZARDOUS MATERIALS OTHER THAN BULK LIQUIDS.

THE PORT AND WATERWAYS SAFETY ACT (33 USC 1221 ET SEQ.) GIVES THE COAST GUARD THE BROAD AUTHORITY TO PROMULGATE AND ENFORCE REGULATIONS TO PROVIDE FOR THE SAFETY OF THE PORT AREA IN REGARD TO MAINTAINING THE SAFETY OF THE WATERFRONT, CONTROL OF VESSEL MOVEMENT, AND OTHER MEASURES TO PROMOTE SAFETY AND PREVENT POLLUTION OF THE WATERS OF THE UNITED STATES. THE FOREGOING ARE SPECIFIC LEGAL AUTHORITIES FOR VARIOUS COAST GUARD ACTIVITIES. ON THE MIAMI RIVER, THESE ACTIVITIES CAN BE BROKEN DOWN INTO SEVERAL BROAD CATEGORIES.

1. INSPECTION OF DESIGNATED WATERFRONT FACILITIES AND MOBILE OIL TRANSFER FACILITIES
2. BOARDING OF ACTIVE VESSELS
3. MONITORING OF LAID UP COMMERCIAL VESSELS
4. INVESTIGATION AND MITIGATION OF POLLUTION INCIDENTS

THE ROUTINE WATERSIDE HARBOR PATROLS OF THE MIAMI RIVER, CONDUCTED BY CAPTAIN OF THE PORT APPROXIMATELY TWICE A WEEK, ARE AN EXCELLENT TOOL TO:

- o LOCATE POLLUTION;
- o DETECT UNSAFE PRACTICES AND CONDITIONS ABOARD VESSELS AND WATERFRONT FACILITIES;
- o LOCATE ANY AREAS ON THE RIVER WHERE NAVIGATIONAL HAZARDS EXIST; AND,
- o BY OUR PRESENCE, DETER WOULD-BE VIOLATORS. WE REACT IMMEDIATELY TO ANY REPORT OF POLLUTION.

DESIGNATED WATERFRONT FACILITIES, SUCH AS BREAK BULK AND CONTAINERIZED CARGO HANDLING FACILITIES ALONG THE MIAMI RIVER, ARE INSPECTED AT LEAST ANNUALLY TO ENSURE COMPLIANCE WITH THE HAZARDOUS MATERIALS REGULATIONS CONTAINED IN TITLE 49, CODE OF FEDERAL REGULATIONS, PARTS 171 THROUGH 176, THE INTERNATIONAL MARITIME DANGEROUS GOODS CODE, AND THE DESIGNATED WATERFRONT FACILITY REGULATIONS CONTAINED IN TITLE 33, CODE OF FEDERAL REGULATIONS, PART 126. FREIGHT CONTAINERS ARE ALSO ROUTINELY SPOT CHECKED TO ENSURE THE HAZARDOUS MATERIAL REGULATIONS HAVE BEEN ADHERED TO. IN FISCAL YEAR 1984, 48 OF THE MOBILE MARINE OIL TRANSFER FACILITY OPERATIONS WERE MONITORED WHILE THEY WERE BUNKERING VESSELS TO VERIFY COMPLIANCE WITH THE REGULATIONS CONTAINED IN TITLE 33, CODE OF FEDERAL REGULATIONS, PARTS 154 AND 156. THE CAPTAIN OF THE PORT HAS ALSO RECENTLY BEEN TASKED WITH THE INSPECTION AND CERTIFICATION OF RECEPTION FACILITIES FOR WASTE OIL. THIS PROGRAM WILL BE CARRIED OUT IN ACCORDANCE WITH THE REGULATIONS ISSUED IN TITLE 33, CODE OF FEDERAL REGULATIONS, PART 158. HOT WORK PERMITS, FOR WELDING OR BURNING OPERATIONS ON THE FACILITIES OR VESSELS MOORED THERETO, ARE REQUIRED WHEN HAZARDOUS MATERIALS ARE LOCATED IN THE VICINITY.

THE COAST GUARD INSPECTS AND MONITORS CARGO OPERATIONS ON ACTIVE VESSELS TO ENSURE COMPLIANCE WITH THE REGULATIONS DEALING WITH VESSEL AND NAVIGATION SAFETY, MARINE SANITATION DEVICES, FINANCIAL RESPONSIBILITY FOR OIL POLLUTION REMOVAL COSTS, POLLUTION PREVENTION, THE LOADLINE CONVENTION, MARPOL, SHIPMENT

OF HAZARDOUS MATERIALS, AND MERCHANT VESSEL MANNING. THE INSPECTION AND MONITORING ARE CONDUCTED AT SIX MONTH INTERVALS, SO THE VESSEL IS VISITED AT LEAST SEMI-ANNUALLY BY A COAST GUARD BOARDING TEAM AT SOME PORT IN THE UNITED STATES.

UNDER THE BROAD AUTHORITY OF THE PORTS AND WATERWAYS SAFETY ACT, THE CAPTAIN OF THE PORT MIAMI HAS PLACED RESTRICTIONS ON VESSELS IN LAY-UP STATUS. IN THIS REGARD, THE CAPTAIN OF THE PORT HAS PREPARED VESSEL LAY-UP PROCEDURES WHICH DETAIL THE CONDITIONS AND RESTRICTIONS THAT MUST BE MET. THESE PROCEDURES ENSURE THAT THESE VESSELS ARE SAFE, ENVIRONMENTALLY SOUND, PRESENT NO UNDUE HAZARD TO THE PORT, AND DO NOT RESTRICT OR OBSTRUCT NAVIGABLE WATERS. AT THE PRESENT TIME THERE ARE ELEVEN VESSELS IN LAY-UP STATUS ALONG THE MIAMI RIVER. HOWEVER, A CURRENT PROBLEM ON THE MIAMI RIVER IS THE NUMBER OF VESSELS NOT IN A LAY-UP STATUS WHICH HAVE BEEN NEGLECTED AND ABANDONED. AT SOME STAGE, MANY OF THESE VESSELS HAVE BECOME A HAZARD TO THE PORT IN THE FORM OF POTENTIAL FIRE OR POLLUTION THREATS, OR HAVE BECOME A HAZARD TO NAVIGATION BY SLIPPING THEIR MOORINGS AND BLOCKING THE CHANNEL. WHEN THE CAPTAIN OF THE PORT DETERMINES THE VESSEL DOES POSE A HAZARD TO NAVIGATION HE WORKS CLOSELY WITH THE U.S. ARMY CORPS OF ENGINEERS WHO HAVE THE PRIMARY FEDERAL RESPONSIBILITY TO REMOVE WRECKS. IN THE CASE OF POLLUTION THREATS, THE COAST GUARD MAY TAKE ACTION UTILIZING THE POLLUTION FUND ESTABLISHED UNDER SECTION 311(K) OF THE FEDERAL WATER POLLUTION CONTROL ACT TO MITIGATE THE THREAT. I NOTE THAT LOCAL GROUPS HAVE ALSO BEEN VERY SUCCESSFUL IN OBTAINING OWNERSHIP OF A NUMBER OF VESSELS AND HAVE MADE USE OF

THEM IN THE ARTIFICIAL REEF PROGRAM. THIS IS AN EXCELLENT SOLUTION TO THIS PROBLEM, AND WE SUPPORT IT WHOLE-HEARTEDLY. ONE OF THE MOST IMPORTANT RESPONSIBILITIES EXECUTED BY THE CAPTAIN OF THE PORT IS HIS ENFORCEMENT OF THE FEDERAL WATER POLLUTION CONTROL ACT. IN 1984, CAPTAIN OF THE PORT MIAMI RECEIVED 14 REPORTS OF SPILLS OF OIL INTO THE MIAMI RIVER. TO DATE IN 1985 THERE HAVE BEEN 17 REPORTS OF OIL SPILLS. THERE HAVE BEEN NO REPORTED HAZARDOUS SUBSTANCE RELEASES ALONG THE MIAMI RIVER DURING THIS TIME FRAME. EVERY ONE OF THE REPORTED OIL SPILLS WAS INVESTIGATED, CIVIL PENALTY ACTION INITIATED WHEN A RESPONSIBLE PARTY WAS IDENTIFIED, AND/OR CLEAN UP ACTIONS TAKEN WHEN NEEDED. IN THREE OF THESE INCIDENTS, THE CAPTAIN OF THE PORT INITIATED FEDERAL CLEAN-UP ACTION. THIS ACTION RESULTED IN THE EXPENDITURE OF $5,627.21 FROM THE 311(K) POLLUTION FUND. THIS CONCLUDES MY STATEMENT. I WILL BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

IMMIGRATION AND NATURALIZATION SERVICE

Senator CHILES. Our next witness will be Howard Rose.
Mr. Rose, please proceed.

STATEMENT OF HOWARD ROSE, DISTRICT COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY ESMERALDA CABRERA, SPECIAL ASSISTANT, U.S. ATTORNEY, AND BRUCE PLASKET, ANTI-SMUGGLING DIVISION, DALLAS REGIONAL OFFICE

Mr. ROSE. My name is Howard Rose, district counsel for the Immigration Service, Miami district. With me is Agent Montville, who is the seizure officer for the Miami sector of the Border Patrol.

FORFEITURE AND SEIZURE DIFFER

Now, one of the things that you have to understand, sir, is that there is a difference between forfeiture and seizure. In the forfeiture proceedings, the title to the vessel or the item seized will eventually go to the Government, and it then will be sold or used by the Government.

In seizure, the vessel is put under constructive seizure, and it is still kept by the owner and maintained by the owner of the vessel, but he is not allowed to leave, and the flotilla vessels were under this provision of the law.

The reason that they were under this provision of the law is in order to forfeit a vessel, there has to be a violation of a section of the criminal code.

The district court and the 11th circuit affirmed the decision stating that: "In the Cuban flotilla cases there was no violation of the criminal code."

Therefore, the vessels were put under the fine procedure, the vessels are under constructive seizure by Customs, so the vessels that we are talking about, the eight vessels, are under our fine procedures by Customs.

The *Sportsman Two,* which has already been talked about, has been seized and held by Customs for a 1982 drug violation.

The Immigration law violation, which is not really a violation but a fine—if somebody brings an undocumented alien into the country, we fine them $1,000 per head.

When we have an action against them, that vessel is supposedly security for the payment of our fine, and we have an action in the district court to collect that fine.

We have other vessels that are subject to Seizures Act, and Agent Montville can explain to you which ones we have, but they are very recent, because we have not gotten any in here for a long time.

The only other vessel that we talked about was the *Sea Grape,* and I understand in talking with Agent Montville that the *Sea Grape* is under constructive seizure, and that it is being held by the owner, but it is involved in litigation.

There is one other vessel, which is a Haitian vessel, that is going through the judicial procedures to be forfeited.

DEFENSE OF DURESS DENIED

Senator CHILES. I understand that the 11th circuit in Atlanta found that there is no defense of duress for the flotilla boat owners.

Do you expect those cases to be resolved quickly, or when do you expect those boats to be disposed of?

Mr. ROSE. The 11th circuit did not find that there was no defense of duress.

What it did say was, "Duress is a defense, and we have to consider the issue of duress."

In the administrative procedures of the fines, we denied the defense of duress.

Now, under the *Puldring case*—which, by the way, Senator, was decided on September 17 of this year—the cases are now remanded back to us, and we are going to be going through the administrative procedures again to assess them on this. We are having a meeting to——

Senator CHILES. I understand that you have got eight boats in the river, eight boats that are in the fine process——

Mr. ROSE. That is correct, Senator.

Senator CHILES [continuing]. And that you have got about five of those owners who say that they cannot pay the fines, or that you cannot find those owners.

Mr. ROSE. That is right. We have the list here, and we have four of them that—we have five in the fine procedures, four of which—no, strike that.

We have five in the fine procedures, three of which we cannot find the owners of, or we cannot get service on them, so we cannot get a judgment for the fines.

You need to have service on somebody before you can get a judgment.

[The list referred to follows:]

CASES OUTSIDE DIRECT CONTROL OF DISTRICT

Date of seizure and number	Description/location	Date of forfeiture		Date CF 42 sent for screening	Date CF 42 returned for disposition	Remarks
		Old law J/S	New law J/S			
Sept. 12, 1977:						
77-5201-00322	Premo Donna					Foreign flag/lost file.**
80-5202-00410/01201	4817AX					Flotilla.*
80-5202-00554	Weekend Affair					Do.*
81-5201-00116	Renegade					Do.*
81-5201-00372	3101EA					Do.*
81-5201-00521	Fiesta Maru					Do.*
82-5201-00007	Miracle of God					Do.*
82-5201-00051	2793DF					Do.*

Senator CHILES. How long are we going to have to keep those boats if we cannot find the owners of them?

Mr. ROSE. We are not keeping those boats, Senator; they are supposedly being held by the owners. If they have been seized, they have been seized by Customs for other reasons.

They are under constructive seizure, which means that the owner is supposed to keep them and retain them, but Customs will not let them depart with them.

Senator CHILES. If you cannot find the owners, who is paying the storage costs on those boats?

Mr. ROSE. If Customs is doing it, it is because they have seized them for other reasons, reasons other than the immigration violations

Senator CHILES. In other words, we have boats that have been seized by Customs, but that you have got a lien on, too, or that you have an interest in; is that correct?

Mr. ROSE. That is correct. We have an interest in them, too, for our fines.

Senator CHILES. Give us a list of the boats that you have that are in that kind of a catch-22 position.

Mr. ROSE. I have got the list from Customs of those that we—we have eight vessels listed, and we have files on six of them.

Senator CHILES. Thank you, Mr. Rose. We will put your full statement in the record,[1] along with the boat seizure list.

[The letter from Immigration and Naturalization Service follows:]

[1] In lieu of a statement, the INS submitted the following letter.

U.S. Department of Justice
Immigration and Naturalization Service

82-0082 - WPJ
CO 703.1071

Office of the Deputy General Counsel

425 Eye Street N.W.
Washington, D.C. 20536

The Honorable Lawton Chiles
Unites States Senate
Committee on Appropriations
Washington, D.C. 20510

Dear Senator Chiles:

This is in response to your letter dated October 7, 1985, requesting our assistance in outlining the procedures used in seizing boats in the Mariel boatlift.

The statue under which fines were levied in the Mariel boatlift is clear. Section 273(a) of the Immigration and Nationality Act, 8 U.S.C. 1323(a) states that:

> It shall be unlawful for any person . . . bring to the United States from any place outside thereof . . . any alien who does not have an unexpired visa, if a visa was required under this Act or regulations issued thereunder."

Section 273(b) provides that the fine for each violation of subsection (a) shall be $1,000.

Section 273(c) provides:

> Such sums shall not be remitted or refunded, unless it appears to the satisfaction of the Attorney General that such person . . . prior to departure of the vessel or aircraft from the last port outside of the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a visa was required.

It is important to note that fines under section 273 of the Act are imposed without regard to the intention of the carrier. It is not necessary for there to be a willful disregard of United

States law. Under section 273, the carrier becomes, in effect, an insurer that its passengers have met the visa requirements of the Act.

It is also important to point out that, as a result of the Eleventh Circuit's ruling in United States v. Zayag-Morales, 685 F.2d 1272 (11th Cir. 1982), the INS was not able to seize Mariel boatlift vessels under section 274(b) of the Act, 8 U.S.C. 1324(b). Instead, Mariel boatlift vessels were seized by the Customs Service because of unpaid fines owing to the INS.

Of the approximately 1,100 vessels that were originally fined, there are approximately 450 open cases. The rest have been settled.

The vessels currently being held in the Miami river are not being held as a result of our fine proceedings. The Mariel boats were placed under constructive seizure, which meant that they were to be held and maintained by their owners, but could not leave port until they either paid fines or posted a bond in an amount equal to the fines. Further, many of those boats were released from constructive seizure as a result of court orders by District Court judges. It is my understanding that only one boat in the Miami river, the Sportsman II, was in any way involved in the Mariel boatlift. However, the Sportsman II was seized because of a subsequent drug related matter, and is therefore not currently under INS seizure.

Two recent 11th Circuit cases have defined the law relating to the Mariel boat fines. It is our hope that these decisions will facilitate the expeditious resolution of the remaining Mariel fine cases.

In United States v. Blanco, 754 F.2d 940 (11th Cir. 1985), the court overruled a final judgment in favor of the defendant which had found that the defendant was subject to duress and coercion. The 11th Circuit stated that to establish a defense of duress, a defendant must show that he performed an unlawful act because he was under immediate danger of death or serious bodily injury, and that he had a well grounded fear that the threat would be carried out, and that he had no reasonable opportunity to escape. This is a very difficult standard to meet, and, in the Government's view, very few, if any, of the boats will be able to meet this standard. See e.g., Bruland v. Howerton, 606 F. Supp. 333 (S.D. Fla. 1985) (masters who recklessly or negligently placed themselves in the hands of Cuban Government are not entitled to duress defense).

In another 11th Circuit case, Pollgreen v. Morris, 770 F.2d 1356 (11th Cir. 1985), the court held that duress is a defense, but that the district court had erred in finding that duress was present in these cases. The court remanded nineteen cases to INS for a finding on the issue of whether or not duress is available as a defense by the boat owners. As a result of the court's ruling, many of the other 450 cases still open, will be also entitled to such a determination. A procedure is now being developed to review these cases.

INS is making every effort to settle these cases consistent with the law and our requirements to attempt to collect fines lawfully imposed. I hope that this information will be of assistance to you.

Sincerely,

Paul W. Schmidt
Deputy General Counsel

Senator CHILES. We will now go to the last panel, and we will have the Florida Department of Natural Resources, Col. Don Ellingsen, director of the Division of Law Enforcement of the Florida Marine Patrol; and Maj. Ted Akey, regional chief of the Florida Marine Patrol.

The city of Miami, Mr. Walter Pierce, assistant city manager.

Dade County: Patrick O'Connor, assistant director of the Public Works Department.

STATEMENT OF COL. DON ELLINGSEN, DIRECTOR, DIVISION OF LAW ENFORCEMENT, FLORIDA MARINE PATROL, ACCOMPANIED BY MAJ. TED AKEY, REGIONAL CHIEF (MIAMI), FLORIDA MARINE PATROL, AND SGT. ROBERT DOUGLAS

Colonel ELLINGSEN. Senator Chiles, I am Don Ellingsen, Director of the Florida Marine Patrol.

Senator CHILES. Your statement in full will be inserted in the record,[1] but we would appreciate your briefing it for us.

DERELICT VESSEL REMOVAL

Colonel Ellingsen, My statement basically refers to Florida's commitment to derelict vessel removal.

The Florida Marine Patrol has kind of a unique position in this situation.

We work very closely with the U.S. Customs Service, the U.S. Coast Guard, and other Federal agencies, and we have done this for a number of years and this commitment has grown stronger over the years.

On the other hand, we are also charged with the maintenance of our shorelines, and we are an active partner with the Miami River Management Committee in the cleaning up of the Miami River, and we have a commitment to that.

I have found the dialog this morning kind of interesting.

The marine patrol has a very active vessel seizure program, but our problems seem to be a little bit different on the State level from those on the Federal level.

We have a problem getting a vessel into the court system for forfeiture.

Once we get it into the court system, we have no problem at all disposing of it—either putting it into service or selling it.

Currently we have about half—about 50 percent of our patrol craft in southeast Florida, which is from the Palm Beach area to the Keys, made up of seized vessels.

Senator CHILES. Half of the vessels that you are now using you say are those that have been seized; is that right?

Colonel ELLINGSEN. That is correct.

Senator CHILES. Thank you.

Colonel ELLINGSEN. All right, sir. And I will be glad to answer any questions.

Senator CHILES. How many men and how many vessels are assigned to the Miami River, and what is their area of coverage, and is that a 24-hour-a-day coverage?

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[1] See p. 52.

Colonel ELLINGSEN. We do not have the personnel to have people on the river 24 hours a day, but we have worked with the Metro-Dade Police Department and the city of Miami Police Department, and they cover the daytime covering of the river, and we cover the late night—the midnight shift, and in addition to that, we have a boat on the river during every shift every day, I believe, going up and down the river. And we have a desperate need for additional personnel.

Senator CHILES. You do not give a 24-hour-a-day coverage?

Colonel ELLINGSEN. No, we do not. But we have at least one on every shift, and then we work the midnight shift.

MARINE PATROL WATCHES FOR VIOLATIONS

Senator CHILES. Specifically what does the marine patrol watch for?

Colonel ELLINGSEN. Any violation of any law, and that would include drug smuggling, fishing violations, boating violations, stolen property, or theft of property, burglary, or any violation of any law.

Senator CHILES. What happened to the rusting, submerged, and partially submerged vessels on the 30 vessel list that was given to you in August?

Major AKEY. Currently on the river itself. We are happy to have only two vessels that are actually in sunken or derelict condition, and on both of them we are doing investigations in terms of determining the owners or custodians.

Senator CHILES. I noticed that there was a houseboat that was capsized, one that we just saw on our way down here, and I would like to know what is going to happen to that boat?

Major AKEY. This particular boat, we have a registration number on it, Senator, and yesterday arrangements were made to pump that particular vessel and the one right in front of it with the Coast Guard.

On that particular vessel, an identification was done on it, and we are contacting the owners and get them to move it. But in case we do not get any cooperation on it, we will go ahead and move it.

Where it poses a potential hazard or threat to navigation, we contact the Corps of Engineers and try to effect the immediate removal of it.

Colonel ELLINGSEN. Senator, that houseboat and the boat directly in front of it were not sunk or tipped over last night. That happened during the night, and we did request the Coast Guard to pump those boats.

Senator CHILES. Thank you.

[The prepared statement of Colonel Ellingsen follows:]

Statement of

COLONEL D. N. ELLINGSEN, DIRECTOR

FLORIDA MARINE PATROL

Senator Chiles:

I am Colonel Don Ellingsen, Director of the Florida Marine Patrol. The Marine Patrol is the law enforcement branch of Florida's Department of Natural Resources. The Marine Patrol is a full service marine law enforcement agency with 308 sworn officers. The primary mission is the safety and welfare of Florida's citizens and guests while using our state's waterways, the protection of our marine resources and the enforcement of numerous other laws directly related to our coastal waters such as drug smuggling, vessel theft, coastal pollution and derelict vessel enforcement.

Senator Chiles, I am here today to share with you the state of Florida's official position relating to vessels left in a derelict condition on our state's waterways. Florida Statutes, Chapters 376 and 823, deal with and clearly define a derelict vessel as one which is stored, left or abandoned in a wrecked, junked or substantially dismantled condition in or on any public waters or port of this state when such condition obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment.

During the last session of the Florida Legislature, funds were appropriated to be utilized by local governments for derelict vessel removal. The funds will be administered through a grant program by the Florida Department of Natural Resources.

For the past five years, the Florida Marine Patrol has had an active enforcement program dealing with derelict vessels. Our program originally started out as a reactive effort to identify and remove as many derelict vessels as possible. We currently have an ongoing proactive program designed to:

1. Identify potential derelict vessels, identify the owner(s), and put them on notice of the derelict vessel laws. This has resulted in many vessels being removed from the waters prior to actually becoming derelict.

2. Investigate those cases involving recent derelict or abandoned vessels to identify the responsible parties and pursue criminal charges where appropriate. Many more vessels are removed at no cost to the taxpayer through such efforts.

3. Work with local government agencies to remove through the grant program those derelict vessels for which other efforts prove unsuccessful.

To date, the department has removed 522 derelict vessels with state funds and caused the removal of another 395 through our enforcement program. Over the past five years, the State of Florida has spent in excess of one million dollars.

One recent example of the State of Florida's commitment to derelict vessel removal was the ship "Mercedes II" which drew national attention after going aground on Palm Beach

last November. Governor Graham and the Cabinet approved the removal of the ship at a cost of $223,000.
The State of Florida, through the Department of Natural Resources and the Florida Marine Patrol, is taking an active role in the ongoing program to clean up the Miami River. The department is currently reviewing each vessel on the River to determine if it is moored over sovereign lands. Civil actions are planned for those found in violation.

On another, but related matter, it is my understanding that Congress passed legislation in 1984 intended to allow state and local governments access to, or share equipment forfeited to the Federal Government from drug related enforcement activities. I am totally unaware of any such transfers to state or local government to date. We have a need for large patrol craft and our Division of Marine Resources has need of large vessels to be used in fisheries research projects. Any assistance in this area would be greatly appreciated.

Senator CHILES. We will now go to the city of Miami.

Mr. Pierce, we are glad to have you here with us today. We will insert your full statement in the record.

STATEMENT OF WALTER PIERCE, ASSISTANT CITY MANAGER, CITY OF MIAMI, ACCOMPANIED BY SERGIO RODRIQUEZ, PLANNING DIRECTOR, CITY OF MIAMI, AND SGT. STEVE KRAVITZ, SUPERVISOR, CITY'S MARINE PATROL

Mr. PIERCE. Senator, we are glad to see you here and looking into the problems we have on the river.

I will not go through my statement, but I will hit what I think are a couple of highlights, and one of those—which you have been asking questions about here this morning—is the great number of derelict vessels and other vessels that have been seized by U.S. agencies and stored on the river—most of which have been stored improperly.

We see that as one of the biggest detriments to the river.

We actually come up with two main points or negatives about the river.

One is the esthetics and the other is the environmental concerns.

The river committee that has been appointed by Governor Graham—you heard earlier from Robert Parks, as chairman of that committee, and we have been working with them and working with Dade County, and we will continue to work with them probably even more than we have in the past.

In talking about the stored vessels, I have a—I know that I should not do this, but I will anyhow, because there is a personal note that I would like to make on those vessels.

For a couple of years, I have watched, in the marina very near the city hall, stored vessels that were brought in by Customs, and I wanted to bid on one, and I watched it for 2 years while I was waiting for it to go on auction.

It was auctioned last week.

On Monday or Tuesday of last week, I went over and looked at those boats, and they would have had to have paid me to bid on one of those boats because they were really just shells of what they had been 2 years earlier.

The other problem that we have environmentally is the river.

The river committee has been asking for assistance in dredging, and not just dredging for pollution concerns, but also maintenance dredging, because this is a working river, Federal water, or a navigable waterway, and we have not been able to get any of that done.

Basically we are glad that you are here, and I have some staff people here with me, and they will be glad to answer any of the questions that you might like to ask them.

Senator CHILES. Thank you, Mr. Pierce.

[The prepared statement of Mr. Pierce follows:]

Statement of Testimony to the
Senate Budget Committee
of the
United States Senate
at
Miami, Florida
October 14, 1985

By Walter L. Pierce
Assistant City Manager
City of Miami

Good morning and welcome to Miami. On behalf of the City of Miami, its residents and businesses, I am pleased to acknowledge your presence here today, the purpose of your visit and to offer to you the City's cooperation and assistance in this important matter.

The subject of your visit - The Miami River - is one of great concern and value to those of us who live and work here and derive from it, either directly or indirectly, some portion of our livelihoods and our civic pride.

The River is short, running only approximately 4.3 miles through our City. However short or brief the Miami River may be, it is a vital economic and recreational fact of life in the City of Miami, County of Dade and South Florida. But this important, vital resource is not being utilized to anywhere near its fullest potential. That is, in our opinion, its present condition inhibits its optimal usage from being achieved.

Water quality is poor due to the historical land uses bordering the River and past practices of drainage ditches dumping directly into the River. Aesthetics of the shoreline leave much to be desired - junk yards, improper moorage, unstable and eroding shoreline and a general lack of adequate maintenance by property owners. Though not technically versed in the scientifics of the various environmental issues of the River's ecology, I also do not believe one has to be technically versed to know this water body is troubled. As a valuable asset to this area specifically, and valuable as well to the region generally, slowly help is coming. But there is much more that could and needs to be done.

The City of Miami and Metropolitan Dade County have been working with the Miami River Management Committee, a group of dedicated citizens and business people appointed by the Honorable Bob Graham, Governor of the State of Florida, to research problems, determine potential solutions and urge application of the most appropriate solutions. I will not get too deeply into the Committee's workings but will note that a major problem that has been highlighted by the Committee is that of derelict vessels. A major obstacle to improved aesthetics is the large number of derelict vessels being stored on the River. At last count there were some thirty (30) derelicts that were privately owned craft, mostly small pleasure craft. But in addition, the number of derelict boats, many being larger ocean-going vessels, being moored under the custody of United States agencies was more than double that of the number of privately owned and moored derelict craft. Often these deteriorate into almost a worthless mass before their disposal. Aesthetics would be improved simply if these agencies required their vendors to observe Coast Guard layup procedures for any boat placed in a vendor's custody by U.S. agencies. Even more improvement would be noticed if these vessels were simply disposed of more quickly. The Miami River is a navigable waterway but we see no enforcement of the applicable Federal regulations.

It is understood that Customs and other federal agencies must observe due process procedures and cannot immediately dispose of these boats. But it is wondered why once possession is granted to these agencies that a boat must sit until it deteriorates to the point where it is questionable if the mooring fees paid out would equal the income received when a vessel is finally scheduled for auction.

Though I do not ride along the Miami River on a daily basis, I can use the example of a marina located very near City Hall where I am present each weekday. I have seen boats confiscated and turned over to the marina operator there for storage which were very decent looking boats at the time they were confiscated. This past week there was an auction conducted by the General Services Administration and, since I am desirous of owning a boat, I went to look them over thinking that maybe I would bid on one. But what I saw on Monday and Tuesday of last week looked like mere shells of what they looked like when they were brought in more than two years ago; even if they were accurately appraised upon seizure, they could have been worth only a fraction of that value upon auction.

We in the past have used the River as a dumping ground. When I say we I am referring to the City of Miami, County of Dade, State of Florida; and this has been done with concurrence of a number of Federal agencies. That is, we built road projects with outfalls that flowed directly into the River or into the River's contributaries. We allowed private landowners to dump into the river their storm water runoff and a few other things and, illegally, owners of adjoining properties have used the River for their own dumping purposes. There have also been situations in years past when we did not know any better, that private businesses located on or near the River's banks, as a consequence of whatever their industrial process was, their various pollutants just simply leached into the River. We know that along one contributary, the Seybold Canal for instance, there was an automobile battery manufacturer where acids, mercury, arsenic and other heavy metals were just dumped on the ground and subsequently ended up in the River via the Seybold Canal. Though many of these business are no longer there they left a legacy of pollution. We are not pointing fingers at them at this time, but we do need to clean that up.

The City of Miami has spent in the last year $1.71 million to correct some of our outfalls. However, it is estimated that we would need another $40 million to correct all of our outfall problems along the River. Even if we did we would still need other agencies to correct theirs. For instance, the State of Florida and Dade County for their road projects. We are trying. Last year City voters approved a $30 million storm sewer bond issue and out of that we will construct new drainage facilities and correct some more of our problems; an additional three (3) projects costing $1.193 million will be underway this fiscal year. We are presently designing projects to utilize the approved bond funds to correct other problems over the next several years.

This then brings us to the question of the River's use as a working waterway. Due to shoaling, the original dredged depth has been reduced from fifteen feet (15') to ten feet (10') in many areas. Maintenance dredging is needed for economic reasons but more importantly, it is needed for environmental purposes. What is on the River's bottom is not just mud but is polluted mud. We are going to do our best to stop pollution but then we would like to see some interest on the part of the U.S. Army Corps of Engineers in assisting the City, County and State in a solution for improvement and enhancement - removal of the bottom sludge.

We have increased our enforcement activities and we have crafted a new ordinance applicable to moored craft. The City's Mayor, Commission and Manager are behind our efforts. In closing I would like to reiterate our thanks for your coming here to see first hand problems on and of the River and we urge that you take, and urge the taking of, actions that would aid us in cleaning the River and returning it to a central source of vitality for the southeast Florida community. The river can be a very beautiful feature and it can be enhanced even more so that it becomes an active, viable, economic tool to aid south Florida and the nation. We appreciate very much your inquiry and we look forward to cooperating with you and other agencies of the Federal government in whatever way we can to realize our goal of seeing the Miami River restored and re-enhanced. Thank you.

MOORING CODE DRAFTED

Senator CHILES. Mr. Pierce, you mentioned in your statement that the major obstacle seems to be the rusting hulks which are owned by both the private citizens and the Federal Government, but what is the city of Miami doing about those owned by private citizens, or what role can you play?

In other words, we are here today, and we are trying to get on some of the Government agencies and change their acts a little bit. But what is the city doing about those owned by private citizens?

Mr. PIERCE. Senator, we did draft a mooring code. I do not think that is going to be a total answer, but it is a start.

That code went before the city commission on one occasion, and then it was deferred, and it is now being reworked and it will be back before the commission.

If there are any specific questions on that, Al Rodriguez is here, our marine specialist, and he can answer those questions for you and how it will affect those privately owned boats.

Senator CHILES. Now, until the code is enforced by the city, is the county or State code being enforced?

Mr. PIERCE. We do not enforce the county code because it is not applicable in municipalities. It is only applicable in the unincorporated areas, to my knowledge.

Senator CHILES. What about the State code?

Mr. PIERCE. I am not—Al?

Senator CHILES. Tell us your name for the record, please.

Mr. RODRIGUEZ. I am Sergio Rodriguez, planning director for the city of Miami.

The State takes care of identifying derelict vessels. That is No. 1.

The ones that we deal with presently are those that are on city property, and those we have been effectively disposing of in the past years.

Those that are on private property, we are not able to touch, but we will be with the new mooring code.

CITY MARINE PATROL HAS AUTHORITY ON RIVER

Senator CHILES. Your city marine patrol has authority over the river.

How many employees are assigned to the Miami River, and how many craft do you have?

Sergeant KRAVITZ. Sgt. Steve Kravitz, supervisor of the city's marine patrol.

Currently, we have 10 officers and myself. We have 26 miles of coastline and 19½ miles of bay which falls under our jurisdiction.

We patrol for 20 hours a day, and half of that time we try to spend on the river.

Senator CHILES. About half of the time?

Sergeant KRAVITZ. Yes, sir.

Senator CHILES. So there is a gap of 4 hours a day.

Sergeant KRAVITZ. We work two 10-hour shifts per day and the river is 4½ or 5 miles long, and we get a call in the bay. It takes quite awhile to get back to the scene of the call, but we do try to spend 5 hours per shift on the river every day.

Senator CHILES. About 5 hours of a 10-hour shift?

Sergeant KRAVITZ. I am not saying that we do that every day. It is our goal to do that, but we get calls for service, mechanical problems and personnel shortages and what have you. And there are times when we do not have the hours to achieve that goal.

Senator CHILES. Have you done anything to determine whether you could overlap with some of the Florida Marine Patrol officers so that we would know that the river would sort of be under control?

In other words, if everybody knows that there is a 4-hour gap every day, I do not know whether your 10-hour work shifts—it would seem to me, if I were going to be involved in any activities on the river, I would always pick those 4 hours. So is there any way of making sure that——

Sergeant KRAVITZ. Yes, sir. We intend to do that. And the Florida Marine Patrol stated that they wanted the late evening hours.

We work until about 2 a.m., and they pick up the slack, and we pass them on the river during the daylight hours. So there are times when there is double coverage, but we are the recognized authority on the river. And persons who need police assistance on the river call the Miami Police Department, so we do try to coordinate our patrol efforts on the river, yes, sir.

Senator CHILES. Thank you very much.

Sergeant KRAVITZ. My pleasure, Senator.

Senator CHILES. We will now go to Dade County, Mr. Patrick O'Connor.

STATEMENT OF PATRICK O'CONNOR, ASSISTANT DIRECTOR, PUBLIC WORKS DEPARTMENT, DADE COUNTY, ACCOMPANIED BY SGT. TIM PIPER, METRO-DADE POLICE MARINE PATROL

Mr. O'CONNOR. Senator Chiles, it is a pleasure to be here.

Again I have submitted the testimony to you in writing, so I will just summarize it now.

Senator CHILES. Thank you, and your statement in full will be put in the record.[1]

Mr. O'CONNOR. Very good.

I have with me Sgt. Tim Piper of the Metro-Dade Police Marine Patrol.

Dade County is extremely encouraged by the recent enactment of Federal drug laws which provide administrative, rather than judicial, release of these vessels.

Beyond that, the new Coast Guard layup procedures, we think, if enacted fully, will have a tremendous ability to accomplish some of the missions which we are both looking for. However, we do feel and see that there is a problem, and additional measures need to be taken to resolve the administrative and legal problems that keep the vessels seized prior to 1984 from being disposed of, and to get them out of the river.

Those older vessels do not qualify under the new program.

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[1] See p. 62.

OFFSHORE ARTIFICIAL REEF ULTIMATE ANSWER

What we do offer to the Federal Government and to all other jurisdictions is our offshore artificial reef sites as a permanent home for these derelicts.

We encourage the use of the reef, and we will be very much involved.

We offer our Bomb Squad and our Metro Marine Patrol to be involved in the sinking, in the cleaning and in the overall removal of the vessels. However, we do not feel that it is an appropriate local government expenditure to fund the actual removal and sinking of these vessels.

In summarizing, overall we feel that the offshore artificial reef is the ultimate answer.

The sale to the private sector is one for those vessels that do have value. However, for all of the rest of those vessels, we think the reef is the most appropriate place.

We will commit to provide the administration and supervision of the placement of those vessels on the artificial reef sites.

That is all, sir.

Senator CHILES. Thank you.

[The prepared statement of Mr. O'Connor follows:]

METROPOLITAN DADE COUNTY, FLORIDA

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October 14, 1985

The Honorable Lawton Chiles
U. S. Senate
Senate Office Building
Washington, D. C. 20510

Dear Senator Chiles:

I am pleased to be here representing County Manager Merritt Stierheim to testify on a subject that is of utmost importance to all of us; the problems of seized and derelict vessels on the Miami River, and in more general terms, what all of us need to do to make the Miami River safer, more navigable and cleaner.

First, let me stress that Dade County is extremely encouraged by the recent enactment of Federal Drug laws which provide administrative rather than judicial procedures for the disposal of seized vessels valued at less than $100,000. This is already having a positive impact on the River as evidenced by the large number of vessels that were put up for auction last Wednesday. The new Coast Guard layup procedures will also correct much of the illegal mooring that presently occurs along the River's banks when enforced for seized vessels. We believe, however, that additional measures need to be taken in resolving the administrative and legal problems that keep the vessels seized prior to 1984 from being disposed of expeditiously and economically.

The County encourages the Federal Government to make use of our offshore artificial reef sites, which stretch from the Broward County line to Biscayne National Park, as disposal sites for forfeited seized vessels. The Dade County Department of Environmental Resources Management, the Metro-Dade Marine Patrol and Bomb Squad can and will dispose of vessels when the County or another appropriate entity has received title for the vessels from the Federal Government. However, we do not consider funding for the acquisition, cleaning and hauling to the reef site as an appropriate local government expenditure. Disposing of the seized vessels on our artificial reefs provides several benefits... making the River cleaner and safer, plus increasing valuable marine habitats that provide direct recreational and economic benefits to the Dade community and tourists.

With regard to derelict and improperly moored vessels Dade County enacted laws addressing these problems many years ago. The County's derelict vessel code was written to address the problem of abandoned and valueless vessels in our waterways. It is a cumbersome tool to use for disposing of larger vessels due to the requirements that the vessel be proven valueless and abandoned. In spite of these rigid requirements, the County has successfully used the code to remove small vessels from the River. In these instances the County's Miss Cleanup, the barge that travels the River on trash cleaning duty four days a week, and other Public Works crews are put to service pulling the boats out of the water.

While the County Code has been successfully used on several occasions, there seems to be a misconception that the County can order a vessel to be removed from the River if the vessel is improperly moored or is unsightly. Dade County does have the authority to remedy the problem of illegal moorage but does not have the authority to dispose of the vessel simply because it is illegally moored. Moreover, it would be inappropriate for Dade County to correct the problems of improper mooring of Federally seized vessels by expending local public funds to provide adequate mooring or to move the vessel to adequate mooring facilities when the government is already paying for the moorage and maintenance of these vessels.

It is also important to recognize the role of the State Government. The State has made a commitment in recent years to remove derelict vessels from around the state, including Dade County. We are pleased that after a number of years during which the funds were unavailable, that funds allocated for this program will once again be spent for vessel removal.

To summarize the County's role and functions regarding seized, derelict and improperly moored vessels, we offer and encourage the use of our offshore artificial reef sites as disposal sites for seized vessels. As the Federal or State Governments make available vessel title and disposal funds, the County will provide the administration and supervision of placement of vessels on the artificial reef. We will continue to enforce our derelict vessel code with regard to valueless and abandoned vessels and will enforce our moorage code where practical.

In addition to the efforts of the County Marine Patrol and the Artificial Reef Program, Metropolitan Dade County continues to commit to making the River cleaner and safer through our environmental regulation and enforcement, planning and debris removal programs. Further we are providing significant staff support to the Miami River Management Committee in developing a comprehensive approach to addressing the River's problems. As the County provides the local effort, we will look to the State and Federal governments for positive action and a commitment of funds for storm water runoff abatement and dredging of the highly polluted river bottom sediments.

Thank you for making available this forum. I will be pleased to clarify this material or answer any questions you may have regarding the County's role in remedying the various issues related to the Miami River.

Sincerely,

Patrick V. O'Connor

Patrick V. O'Connor
Assistant Director
Public Works Department

Senator CHILES. You mentioned that it would be inappropriate for Dade County to enforce its mooring ordinances for federally owned vessels. And I understand that you believe that it would not be wise to use Dade County's tax dollars to correct Federal problems. But can you not cite or otherwise encourage Customs to correct the situation?

Mr. O'CONNOR. Absolutely, sir. We could cite and encourage them to do that.

MOORING CODE NOT BEING ENFORCED

Senator CHILES. It seems like to me we have got a situation where nobody monkeys with another monkey's monkey.

You have got Customs, and no one is enforcing the layup provisions, the layup plans.

Nobody is enforcing mooring codes.

We have got vehicles which have been seized by the INS and we have got some that are under the State Department, and we have got some that are under the Justice Department, and we have got some that the DEA might have.

If nobody is going to enforce a program—if the Coast Guard is not because they are a Federal agency, and you are not because they are a Government agency, that seems to make exempt an awfully lot of the vessels on the river, and it seems like to me that if those vessels are put out by Customs on a bid and in the hands of other folks, that private vendor should not be exempt from a mooring ordinance or a layup plan specifically because he has a Government vessel.

Your mooring code is to protect, is it not, the river and the citizens of Dade County, and they are to be protected regardless of whether it is a Government vessel or not.

Mr. O'CONNOR. We agree to a certain extent, Senator. However, we would feel—and our legal staff would have to look into this—that we could not really place a lien on a vessel when the Federal Government already has it in a lien status, and our lien would be inferior, based upon the cost that it would take to remedy the condition.

We have some great concerns there.

Senator CHILES. Is the lien the only provision that you have for enforcing your mooring code?

Mr. O'CONNOR. Our mooring code is to correct and remedy the problem—the problem via the shipowner or the abutting property owner.

Senator CHILES. Right.

Mr. O'CONNOR. The method that is used is to cite them, as you are well aware, but beyond that, their failure to correct the problem would cause us—we have the authority to correct that problem but, to my knowledge, the river does not have the capacity of legal mooring sites to place all of those vessels. And then I do not think the local government's expenditure would be appropriate, in the event that the Federal Government is already paying for that service.

CUSTOMS SHOULD NOT BE EXEMPT FROM LAW

Senator CHILES. Well, in addition to placing the lien, would you not have the authority to enjoin or to fine or to do other things if they failed to correct the problem, or is the lien the only procedure or authority that you have?

Mr. O'CONNOR. No; we have the authority to actually correct the condition, but the actual correction would call for the removal of the vessel from its location, in many instances at great expense.

Senator CHILES. Well, it still seems to me that, regardless of who put it there in the wrong place, or if it is not moored properly, Customs should not be exempt from the law.

Mr. O'CONNOR. We agree.

Senator CHILES. We removed the President of the United States because we said that he was not exempt from the law, so it seems we ought to be able to deal with this.

Colonel ELLINGSEN. Senator Chiles.

Senator CHILES. Yes, sir.

Colonel ELLINGSEN. Under our State oil spill laws, the Federal Government's vessels are specifically exempt.

Senator CHILES. Well, if they are exempt, I can see some good reason for that. But it seems to me that Customs could certainly put into their contracts the provision that their vendors be subject to the mooring laws, and that it would be one of the conditions of the contract.

As we see INS having a lien on a vessel that Customs has seized, I see no reason why you all could not get into the line of that process if somebody is not doing it properly or have some action against the vendor if he is not complying with the mooring codes.

Sergeant PIPER. Senator.

Senator CHILES. Yes, sir; give us your name for the record, please.

VENDORS AGREE TO COMPLY WITH MOORING CODE

Sergeant PIPER. I am Sergeant Piper of the Metro Police Department, and I am also a member of the Miami River Management Committee. And during our first committee meetings, Customs was there, and also some of their vendors, and they did agree to put into their contracts—and also the vendors agreed to live up to the mooring code, and we have one here that has.

Senator CHILES. Excuse me.

Sergeant PIPER. The agreement that we had with Customs at the time—the River Management Committee—was that any new vendors would have to comply with the Coast Guard's mooring code.

That was at one of the meetings.

The other one was with the vendor, and I believe that Mr. Sugarman is here from Sugarman Brothers, and they do comply with the mooring codes. And the only other real problem areas are the ones that are just along the banks. And if we were to cite the abutting landowners under our enforcement action, we really do not have the funding to go ahead and install the proper types of moorings in all of those situations, and if the vessel is not worth in dollars what it is going to cost us to do it, then it is certainly inappropriate to spend that kind of funds.

Senator CHILES. If that is a violation, do we just allow it to go on forever, or do we find some way of forcing the best to be removed, or of doing something so that we do not have the violation?

Sergeant PIPER. We have remedied quite a few of them, and we have even cited our own county manager because it was county property that it was illegally moored on. But that allowed us something to enforce, but we are not going to—if we cannot get title to the vessel, then we certainly cannot take it and make a reef out of it.

Senator CHILES. Well, I thank you for your appearance and your testimony, and I do intend to come back in 6 months.

We are hearing of some plans in progress with Customs, and I certainly hope that we will have a better report in 6 months. And I hope that each of you will work closely with the River Committee.

It seems there is a coordinating body, and if everybody will go in there and work together cooperatively, then we can get more done.

I want to thank each one of the witnesses and the River Committee, and the city of Miami for allowing us to use the Jose Marti Park. This is a beautiful area and we are delighted to be here.

The boat will be going back in a few minutes, and if you want to ride on it, it will be available to take people back. So we will recess our hearing now and look forward to having a much better progress report in 6 months from now.

It is obvious that much needs to be done if we are to make the Miami River into the great river it should be.

You have committed yourselves today to working toward that end and we will now recess this hearing for 6 months when we will return to see what progress has been made.

Thank you very much.

[Whereupon, at 12 noon, the committee adjourned.]